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COMMUNITY RIGHT-TO-KNOW LEGISLATION AND ITS REGULATORY AND PAPERWORK IMPACT ON SMALL BUSINESS

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

COMMUNITY RIGHT-TO-KNOW LEGISLATION AND ITS REGULATORY AND PAPERWORK IMPACT ON SMALL BUSINESS

JUNE 18, 1985

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COMMUNITY RIGHT-TO-KNOW LEGISLATION AND ITS REGULATORY AND PAPERWORK IMPACT ON SMALL BUSINESS

TUESDAY, JUNE 18, 1985

U.S. SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The committee met, pursuant to notice, at 10:03 a.m., in room SR-428A, Russell Senate Office Building, Hon. Alfonse M. D'Amato (acting chairman of the committee) presiding.

Present: Senators D'Amato, Trible, Bumpers, Sasser, and Dixon.

Staff present: Milton C. Waddell, Jr., counsel; Tracy Crowley, hearing clerk; Bruce Ray, legislative director, Senator D'Amato; and Elaina Newport, legislative assistant, Senator D'Amato.

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. The Small Business Committee will come to order.

I appreciate Chairman Weicker's giving me this opportunity to chair this hearing of the Small Business Committee on the tremendously important issue of community right to know.

I recently sponsored a local government conference where mayors, town supervisors, county officials, and other local government officials came to discuss issues of importance to them. The liveliest session of the whole conference was the discussion of the community's right to know about the use of hazardous chemicals in their area. This is an issue of intense interest to local officials who are responsible for the health and safety of residents in their communities, but who also are looking for ways to help their town or county grow economically. They want to attract jobs and industry to their areas, and they want to keep them there, but they are very much concerned about the accidental release or spills of toxic chemicals.

One of the biggest frustrations I face in Congress is that too often we find ourselves putting out fires when what we really should be doing is taking the time to plan long-term preventive measures. So, I am especially pleased to be involved in the issue of community right-to-know where we can take some positive, long-term measures.

I am extremely disappointed by the Senate Environment Committee's unwillingness to hold public hearings on this issue before the Superfund legislation comes to the floor. I requested hearings several months ago, and we also invited them to make today's hearing a joint hearing. I know the committee has made excellent progress on several important pieces of environmental legislation this spring, and I know that they are dealing with a variety of priorities, but I would suggest that it is also all the more reason to give the community right-to-know issue the full attention that it deserves and be certain that all sides have a chance to be heard.

We are going to hear today about some State laws designed to deal with this problem. Although New Jersey has a State right-to-know law, and other States are developing or have developed their own proposals, this problem is not confined to within States. For example, between October 1984 and February 1985, there were 13 reported toxic releases into the air from the part of New Jersey adjacent to Staten Island. Residents of New York are understandably concerned about releases across State lines. The New Jersey right-to-know legislation does not protect them.

I am sure every local official thinks about this: What would we do if one of these events occurred in my town? Would our local emergency officials be familiar with the chemicals involved? Would we know what to tell the residents of our communities and the staffs at local hospitals about how to respond to such a disaster? Would we be unprepared for such an incident?

There is certainly a great deal of support for this concept, and I think the challenge which faces us here today is to develop a proposal which will get the necessary information to the appropriate local officials without causing undue burden on plant managers, small businesses, and the chemical industry. After all, a major emphasis of this administration has been to reduce the paperwork and regulatory burden on the business community.

Local officials are justifiably concerned, for they frequently are held accountable to their constituencies for decisions to place chemical manufacturers in their communities. I believe that they will be less frightened if they find a willingness on the part of the manufacturing industry to share information and to help plan for emergencies.

Frankly, some of the reactions to this issue in the Congress have been rather extreme. We are here today to get input as to what we really need to know. What information will be helpful, and what will be extraneous paperwork? What can local officials use, and what will sit on the shelves gathering dust? While I believe it is inevitable that Congress will deal with this issue during the current session, it doesn't serve anyone's interest to hastily pass legislation which will impose a great deal of paperwork requirements resulting in unused information. The important thing is to get the right information into the hands of those best able to use it.

In March, I introduced the Community Right-to-Know Act of 1985, S. 606, which I believe provides a simple, workable approach. This bill is different from other legislative proposals in that it is geared toward emergency notification and response, whereas other proposals are geared toward compiling massive quantities of information for long-term tracking of chemicals. S. 606's major provisions include:

One. The owner or operator of any facility involved in the generation, treatment, or storage of any hazardous substance will be required to notify the responsible local officials within a 10-mile radius. This notification will provide a description of the hazardous substance, the amount of substance present, and the emergency procedures which should be taken in the event of a release, explosion, fire, or other accident. The notification will be made on an annual basis or whenever a change in the use of the chemicals occurs.

Two. In the event of an emergency, the owner or operator will be required to contact the appropriate local officials as soon as possible to report the incident.

Three. This bill exempts small operators, those with less than 100 kilograms of a substance, except when the EPA determines that smaller levels could be dangerous. It also gives the EPA Administrator discretion in exempting certain retail establishments such as dry cleaners, small paint stores, and printers.

There are other proposals on this issue, and we will discuss them today. The Superfund bill, which the Senate Environment Committee has reported, includes language establishing a national inventory of hazardous chemicals. This inventory would be provided to everyone from the President of the United States to the local library. This amendment was offered by my colleague, Senator Lautenberg, who will be our first witness today. Senator Lautenberg is here to discuss this amendment as well as other proposals he may be considering for when the Superfund comes to the Senate floor.

In the House, we have even more far reaching proposals that cover more chemicals, as many as 2,300, to regulate chemical plant design and operation, and to require labeling of all pipes and canisters used for hazardous chemicals.

We could spend a great deal of time looking at each aspect of each of these ideas, but I don't want this hearing to be a debate on where we dot our i's and cross our t's, but rather a discussion of what information we need, how we get it, who it should go to, and how fast we can do it.

I expect this issue to move quickly during the coming months. I have been impressed, during my consideration of this issue, with the willingness of many manufacturers to voluntarily address many of the concerns of local communities. I have seen commendable efforts on the part of individual establishments to keep emergency officials informed and to work with them on emergency plans.

But these efforts must be consistent throughout the industry. It is in everyone's best interest to deal with this issue. There are no winners when we fail to plan for this type of emergency. We need to take positive steps now to address this issue, and we need to take them as quickly as possible.

I have my colleague, Senator Dixon, here. I am delighted that he is here with us today. Do you have any opening remarks, Senator Dixon.

STATEMENT OF HON. ALAN J. DIXON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator Dixon. Mr. Chairman, I wish to commend you, Senator D'Amato, and the Senate Small Business Committee on holding this hearing to explore the right to know of the community with respect to the presence of hazardous substances in its locality. The tragedy in Bhopal, India, has raised the public awareness and concern over the location and handling of toxic substances. Citizens of all States are increasingly asking more questions over the nature, use, manufacture, and storage of hazardous substances in their communities. The need for this type of information is obvious but must also be viewed in light of the regulatory and paperwork implications of such reporting requirements for small businesses.

I thank you, Senator D'Amato, for your work in chairing this hearing, and I am looking forward to reviewing the testimony of the witnesses.

Senator D'AMATO. Thank you, Senator.

I will, at this point, insert a statement of Senator Bumpers.

[The prepared statement of Senator Bumpers follows:]

STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Mr. Chairman, I appreciate your scheduling this hearing and providing the Committee with an opportunity to consider "right-to-know" legislation which would require operators of facilities which manufacture or store hazardous materials to provide information about those materials to state and local authorities.

The need to make responsible officials aware of the dangers which could be associated with facilities in their area in advance of emergencies has been dramaticaly illustrated by the Bhophal accident. Unfortunately, thousands of facilities in the U.S. produce or use hazardous materials which, if released into the workplace or its surrounding environment, could place large numbers of people at risk. Last year, the American Public Health Association stated its support for the concept of worker and community "right-to-know" in the presence of chemical hazards as being "vital to effective occupational and environmental disease prevention efforts". The federal Occupational Safety and Health Administration has issued a hazard communication standard designed to prevent chemical injury to workers, but the strongest evidence of interest in "right-to-know" requirements is probably the growing number of states that have adopted them.

My strong interest in this issue is partly due to the location of one of the EPA's priority Superfund sites in my State. The large quantities of dioxin contaminated material present at the Vertac site in Jacksonville, Arkansas could present a real danger to that community if a safe disposal method is not found quickly. The legislation we will review today is desinged specificaly to prevent the development of future Superfund sites such as the one at Jacksonville and to minimize the risks of chemical accidents. By informing appropriate authorities of the nature, location, and use of potentially dangerous materials, we should expect to reduce inadvertent exposure to them and improve our ability to respond to any accidents that may occur.

Like most other regulatory porposals, the chemical reporting and inventory requirements which have been included in the Superfund reauthorization bill and in the legislation sponsored by Senator D'Amato will place additional responsibilities upon manufacturers and users of certain hazardous materials. While those responsibilities may be manageable for larger firms, their enforcement could place more substantial burdens on small companies. I commend both Senator Lautenberg and Senator D'Amato for recoginizing this and for including in their proposals exemptions for small companies. I understand that the Lautenberg provisions in the Superfund bill would apply only to those firms employing more than 10 people and manufacturing or storing more than 6000 kilograms of hazardous materials; S. 606, the D'Amato bill, would exempt establishments holding less than 100 kilograms of hazardous materials. I am sure that every member of this Committee would welcome comments from today's witnesses regarding these provisions and the degree to which they would achieve a desirable balance between comprehensive coverage and sensitivity to the capabilities of small businesses.

I hope that today's testimony will also address the feasibility of enforcing the proposals before us and their relationship to other EPA programs for hazardous materials management. The need for a federally authorized "right-to-know" program seems to be widely accepted; this hearing will be most useful if it contributes to designing a program which is reasonable, effective, and enforceable.

Senator D'AMATO. We are pleased to have as our first witness Senator Lautenberg from New Jersey, who has sponsored at least one comprehensive approach to this problem. Good morning, Senator. We are delighted to have you participate.

STATEMENT OF HON. FRANK R. LAUTENBERG, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you, Senator D'Amato. I am pleased to be with you today to testify on the hazardous substance inventory provision in S. 51, the Superfund reauthorization bill and the proposal by Senator D'Amato, S. 606. Both bills require improved reporting from facilities that manufacture or store hazardous substances.

The provision that I authored in S. 51 grew out of hearings held by the Senate Environment and Public Works Committee in February 1985 in the wake of the tragedy in Bhopal, India. The provisions have two underlying purposes. One is to compile an inventory of hazardous substances being released into the environment on a regular, routine, continuous basis. The other is to enable communities to better understand and adequately respond to releases of hazardous substances in their midst.

The hazardous substance inventory in S. 51 was adopted unanimously by the committee after consultation with affected communities and States and the EPA. It would required all facilities manufacturing hazardous substances and facilities which store more than 6,000 kilograms of such substances to fill out a one-page form on a specific hazardous substance on site at the facility every 2 years.

Information must be reported for substances covered by the existing Superfund statute. These are generally explosive, reactive, carcinogenic, or otherwise hazardous and are considered to pose an acute or chronic risk to the public health or environment. The form requests information on the location and the amount of each substance present at the facility and the extent to which such substances are released into the environment on a regular basis.

The provisions in S. 51 require that this information be distributed to EPA, State environment and health agencies, appropriate area emergency response personnel, as well as area hospitals and libraries. In addition, material safety data sheets required by OSHA would be distributed as well. The MSDS contains health related and emergency response information.

The list of substances which must be reported under S. 51 and S. 606 are virtually identical. With respect to the universe of respondents, S. 606 is even more inclusive.

The most striking differences between S. 51 and S. 606 stem from the information requested from affected facilities and the distribution of that information. These are important differences and they go to the heart of the purposes served by the hazardous substances inventory in S. 51. For this reason, I will devote most of my testimony to these differences. Finally, I will highlight for the committee the manner in which the Environment and Public Works Committee sought to keep reporting burdens to small business to a minimum.

First, let me address the provisions in S. 51 which will deal with the collection of information on regular, continuous emissions of hazardous substances into the environment.

S. 606 only requires that facilities covered by the bill report the location and the amount of substances stored at a site. It does not require any reporting of releases to the environment.

S. 51 would require that facilities report on the extent to which such substances are being released into various waste streams. That is, if a facility is regularly releasing hazardous substances into the air, a nearby stream or river, or into a public treatment works, the facility would have to report that fact as part of the information required from it. This information would go to the EPA which would maintain a permanent record for monitoring purposes.

I would hazard a guess that most people assume that industrial facilities emitting hazardous substances into the air or water are reporting these releases, but they are not, and that is the rationale for the requirement in S. 51 that releases of hazardous substances into the environment be reported.

The purpose of the inventory would be to set up a tracking system of hazardous substances at facilities, similar in concept to the so-called cradle to grave tracking system under RCRA for hazardous wastes. We would know where these substances are going. We would know if they are concentrated in dangerous amounts in particular communities. We could put together a complete picture of the flow of these substances to the environment.

This information would provide the tools needed to measure the success of our environmental programs, to enforce them, and to strengthen them to meet previously unforeseen problems. The information would help us to manage hazardous substances more efficiently and to reduce their releases to the environment rather than continuing to push them around as we tighten up one law but not another.

Superfund has largely been identified in the Congress and the public as a toxic waste cleanup program, and that it is. But Superfund was also meant to identify and respond to releases of hazardous substances into the environment.

S. 51, the committee bill, essentially fleshes out a provision in the existing Superfund statute which EPA has never implemented. This provision requires that facilities notify EPA of hazardous substance releases that take place on a continuous, regular basis. S. 51 directs EPA to collect this information in a national inventory.

If hazardous substances are being routinely released into the environment, a facility should have to account for those releases. There is a legitimate public interest in knowing where such substances are going, and I would submit to this committee that tracking the toxics in our highly industrialized society is the environmental challenge of the next decade.

A second purpose of the hazardous substance inventory in S. 51 is community notification or so-called right to know. A driving force behind the inventory is to assure that communities and emergency response officials have sufficient and relevant information about chemicals stored in their midst so that they understand and can respond to unanticipated and potentially deadly releases.

This concern constitutes the rationale for a relatively wide distribution of information about hazardous substances stored at facilities.

Under S. 606, the information provided by facilities manufacturing or storing hazardous substances would be distributed to an "appropriate area official" within 10 miles of the facility responsible for a release. Further, it would be distributed only if the facility is located in a town of at least 15,000 residents.

Under S. 51, the information in the hazardous substance inventory would be distributed regardless of the size of the community in which the facility is located, and it would be distributed more widely. Recipients would include area emergency response officials, hospitals, libraries, and the EPA and State environmental and health agencies. These institutions are the building blocks of an effective emergency response effort. They work together to prepare for and to respond to hazardous chemical releases.

The importance of requiring this information from all facilities storing such substances, regardless of the size of the town in which they are located, and the distribution of this information to institutions within an affected area stems from the basic fact that hazardous substance releases know no boundaries. As evidenced in the accidental release from New Jersey not too long ago, hazardous substances crossed State boundaries into New York City and beyond to Long Island, causing hazards to residents over 30 miles from the site of the accidental release.

This reality led New York City's Commissioner of Environmental Protection to testify before the Environment and Public Works Committee that Federal law should be amended to expand the reporting requirements for materials produced, transported, and used in the region. Senator D'Amato, I know, is all too familiar with these incidents.

In sum, Mr. Chairman, the airborne nature of many hazardous substance releases and the multiplicity of parties affected recommends collection of information about these substances and dissemination to an appropriate range of institutions.

I have made a copy of the hazardous substance inventory form proposed in S. 51 available to this committee. It is modeled on the industrial survey conducted in New Jersey in 1978. It requires substance specific information on a plant-by-plant basis.

The plant on the sample form is in the town of Garfield, NJ. In 1978, it accepted 16 million pounds per year of toluene, suspected carcinogen. It shipped out 11 million pounds of products. One question answered on the form is simple but essential. Where did the 5-million-pound differential not used in the production go? That represented 30 percent of the material, the toluene, brought on site.

The form addresses this question in a simple and straightforward manner. It provides a complete picture of how toluene was utilized at the plant and how much was released routinely into the air and other waste streams.

Information collected in New Jersey from the industrial survey reveals that the routine releases from industrial facilities dwarfed the releases that have triggered emergency response. This brings home the point that if you live on Staten Island or Long Island, you ought to be interested in information about routine releases in

New Jersey, as we in New Jersey are concerned about routine releases in Pennsylvania and other upwind States.

Emergency response situations connote an image of an acute problem. These are deadly serious, but we cannot lose sight of the chronic and long-term health and environmental risks. The distinction between routine releases and incidents that trigger emergency response are often simply a matter of degree. Thus, we need information on routine releases to deal with the toxics that are pervasive in our environment.

We must have information pertinent to both. This is the dual purpose of the hazardous substance inventory in S. 51. The intent is to pull information together on a simple form, in constant units, so that a comprehensive picture of a particular facility and the hazardous substances can be made.

In fashioning the national inventory, the committee tried to be sensitive to striking an appropriate balance between protecting the public health and environment and not imposing an undue burden on industry. We attempted to draw the line in a reasonable place.

S. 51 and S. 606 cover the 800 substances already designated as hazardous under Superfund. This is out of a total of 60,000 chemicals that EPA estimates are in commerce in the United States.

The inventory in S. 51 covers manufacturers and those who store more than 6,000 kilograms. This is substantially less inclusive than the 100 kilogram threshold in S. 606. In addition, under S. 51, facility owners or operators with less than 10 full-time employees would not be required to report. This will exempt the many small businesses, for example, dry cleaners and small retail establishments, that don't have substantial quantities of such materials.

Clearly, the inventory does not cover all facilities that are handling hazardous substances, but it is triggered by a threshold. The inventory makes it clear that emissions data used to satisfy other Federal and State environmental requirements may be used in filling out the survey, and it does not require new and extraordinary monitoring measures. Estimates may be used.

When the State of New Jersey carried out its survey in 1978, the form proposed in S. 51 was sent out to the entire manufacturing sector in the State. What was the result? Over 7,000 responses were collected in a period of 60 days. New Jersey computerized this information and has worked with industry to reduce wastes and dangerous releases.

It is my hope that the New Jersey experience can serve as a model for a national effort.

I would like to close with this thought. We must learn from our past practices in handling hazardous substances. The case will be made by many witnesses that response officials need to know where hazardous substances are located. This is a vitally important reason to have an inventory.

However, we must not lose sight of the importance of tracking routine releases of these substances. The costs of cleaning up hazardous substances, once they have been released into the environment, are enormous.

Businesses are learning that there are also costs associated with losing these materials at the source. Research conducted by INFORM, a nonprofit research group in New York supported by corporations, foundations, and government funds, indicates that many plant managers, once made aware, have taken steps to reduce wastes and releases of hazardous substances that have saved the companies millions of dollars.

This is clearly the direction we must take. There is a lot more that can be done. I appreciate the committee's interest in this legislation, and I would be pleased to respond to any questions that you may have

Thank you, Mr. Chairman.

Senator D'AMATO. Senator Lautenberg, we are delighted that you took the time to appear here today and to build a record with respect to the reasons, the thoughts, and the substance of your proposal and the committee's proposal, S. 51. Certainly, I want to commend you for your efforts and for your undertaking. As you said, it is obviously a lot more beneficial for all to become aware of the problem, to deal with it before that emergency occurs. So, this Senator thanks you for your leadership in this role.

I would be hopeful that if there are certain differences, we could possibly deal with them. I know you have a busy schedule, but if time permits and you would like to join us here, we would be delighted if you are able to respond to some of the thoughts or suggestions that are put before the committee.

Senator LAUTENBERG. I thank you and I appreciate, Mr. Chairman, the offer to join you. Unfortunately, I can't. I am very interested in the testimony that you will be eliciting here.

I think the primary difference between the proposal you have outlined and the one that we passed through the committee is the concern for the routine releases. That stuff is just pumped out every day from stacks all over the place. It is far more risky than the accidental release, because everybody is so keyed into preventing that and to responding to it, not sufficiently. What happened at Bhopal with over 2,000 dead and over 100,000 seriously injured is, in terms of the amount of substance released, is relatively small compared to that which is emitted into the air every day in almost every State in our country.

You, Senator D'Amato, being in one of the eastern most States in our country, are, like we, unfortunately the recipient of the winds that flow across our country that carry, in addition to fresh air and air currents, the hazardous material that is emitted there. So, we have a special concern, and I appreciate your interest.

Senator D'AMATO. Thank you, Senator.

Senator Trible.

Senator TRIBLE. Mr. Chairman, I have no questions for our distinguished colleague from New Jersey, but let me at this time applaud your leadership, Mr. Chairman, and that of Senator Lautenberg. I look forward to working closely with you.

Senator D'AMATO. Thank you.

Thank you very much, Senator Lautenberg.

Senator LAUTENBERG. Thank you very much.

Senator D'AMATO. Our next witness will be Frank Swain, the Chief Counsel for Advocacy for the Small Business Administration.

Mr. SWAIN. Good morning, Mr. Chairman.

Senator D'AMATO. Frank, it is good to see you.

Mr. SWAIN. Thank you.

With your permission, Mr. Chairman, I would like to refer to but not necessarily read verbatim my prepared statement.

Senator D'AMATO. Your entire statement will be incorporated into the record as if read in its entirety. Then, of course, we would like you to summarize and pick out those points that you think you would like to accent.

Mr. SWAIN. Thank you.

STATEMENT OF HON. FRANK S. SWAIN, CHIEF COUNSEL FOR ADVOCACY, SMALL BUSINESS ADMINISTRATION

Mr. SWAIN. First of all, Mr. Chairman, I would like to echo the comments of Senator Lautenberg in praising your initiative and that of the committee in taking a look at this critical issue. Our office at the Small Business Administration does not come here as an expert on hazardous discharges. We do come as experienced in listening to the troubles of the small business community.

Certainly, I think most people in this country, business and consumer, businesses large and small would admit that it is a very significant issue which is certainly an appropriate and important subject for public debate and for the making of some new public policy. I think it is particulary significant that you in the committee are taking time to make sure that any cure that the Congress comes up with to the problem is a cure that is effective and that the small business community can live with it and comply with it.

The problem of hazardous materials and hazardous wastes is one of increasing concern to the public, to the Congress, and to small business. In fact, several recent Federal laws already regulate the manufacture, transportation, use, and disposal of hazardous materials. Our experience working with small business in this area leads us to conclude that if Federal legislation is appropriate here, we hope that three major concerns are addressed.

First, any Federal law must recognize that several regulatory and reporting regimes already exist that cover small businesses in various parts of this issue. Second, any legislative mandate must provide the regulatory agency, in this case, undoubtedly, the Environmental Protection Agency, with the flexibility to implement the law in the least burdensome yet most effective fashion. In other words, the law has to have a degree of flexibility built into it. That is, I think, extremely significant. Third, the law must not attempt the impossible. The provisions of some proposals are impractical or impossible to comply with, and many small firms will become unwitting lawbreakers even when no environmental hazard has been created.

As you know, our office is charged with presenting the small business viewpoint before Congress and the Federal agencies. In this context, we have had a series of discussions and of formal comments on the record with the Environmental Protection Agency and the Congress in the area of control of hazardous wastes. Copies of those are enclosed for the record.

What is very clear to us is that really for the first time, right now and over the next several months, several hundred thousand small firms which were previously unregulated by the EPA are now regulated under provisions that have been recently enacted under the last year's RCRA law, specifically, the so-called small quantity generator provisions which bring the threshold for regulation of hazardous waste generated down to a company that has 100 kilograms per month, and also the so-called LUST provisions involving leaking underground storage tanks.

That is, as my travels have informed me, by no means limited to gasoline stations. Many times, you know, somebody will be selling candy or hot dogs in an old gasoline station on the corner, and all of a sudden they realize that they have to dig their tank up and find what was last in it 30 years ago. There is quite a bit of foment out there in the small business community on both provisions of RCRA regarding, the small quantity generators and underground storage tanks that we are trying to respond to right now.

This experience is relevant to the present issue because we have learned that these newly regulated firms will have great difficulty in hearing about these new EPA regulations, let alone comprehending them. Small businesses, particularly nonmanufacturers, lack knowledge about the specific chemical composition of the hazardous substances they use.

Therefore, we really would like to make three points here this morning, Senator. First of all, we believe that the legislation that is eventually enacted by the Senate needs to have the maximum degree of flexibility built into it.

The community right to know is certainly an important tenet and we stand by that. Nonetheless, it is very difficult to draft legislation that small businesses, nonprofit institutions, schools, and others affected can readily understand and comply with.

For instance, much of the information required by both bills is unknown to small businesses and cannot be obtained by any reasonable expenditure of time or money. Just as an experiment, I went down to my basement last night, and I looked at a couple of half opened cans of paint that I had. The ingredients were listed on it, and I tried to check them against the CERCLA list published in the Federal Register. Now, I am not a chemist, obviously, and I probably didn't know where to look. I don't know whether the various pigments and alkalais and solvents that are listed on the paint cans are on that list or not. I suspect some of them are.

However, I suspect that my degree of sophistication on what is involved in paints is probably about the same as an average hardware store owner who might know what type of paint to cover the wall but might not have a great idea of the chemical toxicity of the 600 or 700 gallons of paint on his shelf. That person is going to be in the position of violating a law if it is not written carefully to make sure that the manufacturer that produces it in the first place is really in charge of packaging and shipping and bears the main burden and that burden is not ineffectively passed on to the distributor and the consumer.

We particularly are concerned about the Lautenberg provision which would further require the reporting of the emission, discharge, and disposal of all hazardous substances at the affected facility. Your bill, of course, Senator, is limited to the inventory requirement. The information would be required under both bills to be distributed to State and local officials. Although both bills have some exemptions addressing small business concerns, I believe that these exemptions do not go far enough. To expect well over half a million small businesses to adhere to these extensive requirements, I think, would be ineffective and probably regulatory overkill.

As was mentioned, there is a 30-page list of chemicals. It is very difficult, I think, for the average small business person that is not in the manufacturing business to wade through that list and figure out whether they need to do something or not do something that they may already be required to do.

There are various State right to know programs, and they have reduced requirements in order to minimize the information collected to facilitate compliance. State laws often have exemptions for products packaged in containers primarily designed for distribution and use by the general public. If you have turpentine in plastic or metal drums or jars and it meets all the packaging criteria, then the person that doesn't have to go count his turpentine inventory to make sure that he is properly reporting under the law if it is properly packaged.

In addition, at least one state exempts all firms that are not manufacturers, suppliers or importers of hazardous mixtures if the employer has the hazardous material less than 20 days. We would certainly offer to work with your office as well as Senator Lautenberg's office and other relevant interested officials in the Congress and the EPA to try to fashion some workable exemption levels.

[The prepared statement of Mr. Swain follows:]

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

STATEMENT OF

FRANK S. SWAIN

CHIEF COUNSEL FOR ADVOCACY

U. S. SMALL BUSINESS ADMINISTRATION

BEFORE THE

SENATE SMALL BUSINESS COMMITTEE

ON

COMMUNITY RIGHT-TO-KNOW LEGISLATION

June 18, 1985

Mr. Chairman, I am pleased to appear before this Committee to testify about the small business impact of the pending Community Right-to-Know provision of the Senate Superfund bill. I appreciate the effort you have made to elevate the small business aspects of the issue. This hearing provides an important focus for consideration of small business impacts and legislative alternatives. The provision currently in S.51 would regulate over half a million businesses without any targetted discussion of the ability of small businesses to comply.

The problem of hazardous materials and hazardous wastes is one of increasing concern to the public, to the Congress and to small business. Several recent Federal laws already regulate the manufacture, transportation, use, and disposal of hazardous materials. Our experience working with small business in this area leads me to conclude that if Federal legislation is appropriate here, three major concerns must be addressed. First, any Federal law must recognize that several regulatory and reporting regimes already exist that cover small businesses. Second, any legislative mandate must provide the regulatory agency with the flexibility to implement the law in the least burdensome fashion. Third, the law must not attempt the impossible: provisions of some proposals are impractical or impossible to comply with and many small firms will become unwitting lawbreakers even when no environmental hazard has been created.

As you know, my office is charged with presenting the small business viewpoint before Congress and the Federal agencies under Public Law 94-305. In this role, we have in the past two years been very involved with EPA and the Congress in the area of control of hazardous wastes. I have enclosed, for the record, our previous correspondence with Congress on the reauthorization of the Resource Conservation and Recovery Act (RCRA).

While much of the small business views were accommodated in the small quantity generator (SQG) and leaking underground storage tank (LUST) provisions of RCRA, the regulatory scheme established by the law will regulate several hundred thousand small firms, most of whom were previously unaffected by EPA regulations. Unlike manufacturers who have historically been subject to environmental controls, many of these newly regulated businesses will be in the service, wholesale, and retail trades. The initial RCRA rules will be phased in starting in August 1985 and will continue being phased in over the next few years.

The RCRA experience is relevant to the present issue because we have learned that these newly regulated firms will have great difficulty in hearing about these new EPA regulations, let alone comprehending them. Small businesses, particularly non-manufacturers, lack knowledge about the specific chemical composition of the hazardous substances they use. This basic lack of knowledge must be addressed in order for any right-to-know legislation to be effectively implemented. We must work to avoid imposing any regulations which are impossible to meet and create small business lawbreakers by default.

The LUST and SQG requirements imposed by the RCRA amendments, standing alone, will be burdensome to small businesses. Combined with right-to-know regulations, the small business impact will be even more severe. All or virtually all the proposed LUST notification and draft SQG reporting and recordkeeping requirements are duplicated in the right-to-know legislation.

1. The Legislation Needs To Be More Flexible

Both Section 106 of S.51, the Lautenberg amendment and S.606, Senator D'Amato's substitute, address the community's right to know. The community has a right-to-know of the hazardous substances stored or used within its borders that may affect the public health or safety. Businesses and other facilities should provide appropriate information in a useful and timely manner. Nonetheless it is very difficult to draft legislation that small businesses, non-profit institutions, schools and others affected can readily understand and comply with, and that yields information in a usable form. Much of the information required by both bills is unknown to small businesses and cannot be obtained by any reasonable expenditure of time or money. Second, information (such as common names of chemicals) that is already available to businesses would likely be adequate to serve many of the right-to-know goals of the community.

Both bills require facility owners and operators to prepare and distribute an inventory of hazardous substances, their characteristics, adverse health effects due to exposure, proper emergency procedures, and handling precautions. The Lautenberg provision further requires the reporting of the emission, discharge, and disposal of all hazardous substances at the affected facility, whereas the D'Amato bill is limited to the inventory requirement. The information required under both bills must be distributed to state and local officials. Further, the Lautenberg bill requires wider distribution, including hospitals and libraries. Although both bills have some exemptions addressing small business concerns, I believe that these exemptions do not go far enough. To expect well over half a million small businesses to adhere to these extensive requirements would be regulatory overkill.

The inventory provisions of both S.51 and S.606 require reporting of hazardous substances as designated under Section 101(14) or 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or the Superfund law). This involves a 30 page list of approximately 700 hazardous chemicals that are not known to the small business community (or others) by their specific chemical name, but only by their common or trade name (see list in April 4, 1985 Federal Register, 50 Fed. Reg. 13461). I know of no small business persons who could readily identify these chemicals at their workplace.

In implementing the RCRA amendment related to underground tanks, EPA proposed a similar inventory requirement but limited it to underground storage tanks, where the chemical components are much more likely to be known. In this instance, EPA will employ its RCRA/Superfund Hotline to aid responding firms in identifying regulated substances. I doubt that the Hotline would survive the avalanche of calls that would be generated by this proposed legislation.

In writing its proposed SQG regulation pursuant to RCRA, EPA found that industry specific fact sheets are necessary to explain the relationship between the required EPA and Department of Transportation (DOT) numbers and their hazardous wastes. Without some effort to identify the substances by names known to small business, there would be substantial noncompliance. However, even these fact sheets are inadequate to provide guidance because many common products have varying chemical constituents which are not identified. Further, the fact sheets cannot cover all possible substances and common names, or stay up-to-date.

Various state right-to-know programs have reduced requirements in order to minimize the information collected and facilitate compliance. The state laws often have exemptions for products packaged in containers primarily designed for distribution to and use by the general public. In addition, at least one state exempts all employers that are not manufacturers, suppliers or importers of hazardous mixtures if the employer has the hazardous material less than 20 days. Neither S.51 or S.606 contain such exemptions. These states have recognized that some flexibility must be included in the law if compliance is to be possible.

2. The Environmental Release Data Requirement is Not Practicable

In addition to an inventory requirement, the Lautenberg amendment requires facilities to report their air, solid waste, and water discharges by hazardous substance (environmental release data). Such a requirement duplicates existing Federal and state laws and rules. To the extent it is not duplicative, the information is generally not readily available or not available at all. For example, a facility can not report air emissions if it has neither a stack nor monitoring equipment. For many substances, no monitoring equipment is available. Furthermore, the specific constituents of air emissions are often unknown (although the general character of the emissions will be known). Thus, the reporting annually or monthly of quantities and type of air emissions, in many respects, is infeasible. As you know, S.606 does not attempt to regulate emissions.

Similarly, for water discharges, many substances still have no generally acceptable measurement techniques. Many plants are exempt from monitoring for some substances under permits issued pursuant to the Clean Water Act, because the quantities discharged are minimal. This list of problems is most likely only a small portion of the problems inherent in environmental release data requirements. We defer to EPA's expertise on this point.

3. The Paperwork Duplication of the Inventory and Environmental Data Requirements Is Overwhelming

Another criticism of both bills is that the inventory and environmental data requirements are duplicative of other regulatory requirements. In the case of RCRA, generators of hazardous waste are already preparing biennial reports of their handling of hazardous wastes shipments and their waste practices for specific hazardous substances which they treat, store, or dispose. In addition, both bills have different exemption levels than the current or future exemptions for small quantity generators under RCRA. This would create complete confusion among small business owners. Finally, many hazardous substances are exempt from RCRA requirements because of the customary safe handling and disposal methods of such substances today; neither bill provides for any such exemptions. The proposed legislation has several other provisions that duplicate requirements of the Clean Air and Water Acts that we have not attempted to list.

4. EPA Needs Regulatory Flexibility

The community right-to-know proposals would rigidly, and I believe needlessly, establish yet another reporting scheme that over one half million small firms will be more likely to unintentionally breach than comply with.

An environmental release data scheme can only work, in our view, if it is tied to specific regulatory requirements under the existing laws already regulating chemicals and the environment. Thus, I do not think a new comprehensive scheme for environmental releases is feasible.

I suggest that Congress not specify the regulatory scheme to use in achieving its inventory goals. Instead, EPA could be directed to formulate a proposal that is workable and serves the community's right-to-know. EPA already has considerable experience with similar data collection under several of its statutes, particularly RCRA and the Toxic Substance Control Act. Tying EPA to regulating specific hazardous substances, exemption levels, and environmental data requirements without the aid of significant public input would frustrate, not promote, a timely and effective program.

I thank the Committee for inviting me, and I would be happy to respond to questions.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

JUN 1 1984

Honorable James Florio
Chairman
Subcommittee on Commerce,
Transportation and Tourism
Committee on Energy and Commerce
U.S. House of Representatives
2162 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing with regard to the provisions of H.R. 5640, "Superfund Expansion and Protection Act of 1984" which would require the Environmental Protection Agency (EPA) to promulgate regulations within specified time frames for underground storage tanks. As you know, the Office of the Chief Counsel for Advocacy was established by P.L. 94-305 (15 U.S.C. §601, et seq.) to articulate the views of small businesses before Federal agencies and Congress. We are writing to inform you of the significant small business impact of your proposed legislation and to suggest an alternative that we believe addresses your valid concern with the tank leak problem.

We are concerned that Title IV of the proposed legislation will have a significant adverse economic impact on a wide variety of small businesses without a concomitant contribution to protection of groundwater supplies and the environment. Title IV requires EPA to promulgate, within a very short period, regulations affecting hundreds of thousands of small businesses. We understand that EPA is currently collecting and analyzing information on the scope of the leakage problem and is assessing the need for regulatory action. Moreover, at least 32 states have addressed or are considering the tank leak issue through legislation and regulation. Furthermore, existing national fire codes already prohibit the use of unprotected tanks in corrosive soils. Thus, it appears to be premature to impose a Federal legislative solution before it is clear that Federal action is warranted.

Title IV requires EPA to promulgate monitoring, leak detection, and tank integrity requirements that are potentially very expensive. For example, EPA informs us that periodic tank tightness tests currently cost at least $1500 per tank per test. At a typical gasoline station, this expense exceeds $4000, including the cost of shutting down the station during the tests. Moreover, such tests provide assurances only that a tank is not leaking at the time of the test. They give no information to owners and operators on the condition of the tank between tests. Title IV's requirement that all new tanks be equipped with leak detection devices could increase tank costs for small businesses of up to $10,000 per tank. Such costs are unreasonable when the reliability of tank leak detection devices has not been satisfactorily demonstrated. Our concern with the proposed legislation's effects is compounded because the bill appears to restrict EPA's discretion to consider costs in promulgating its leak detection, prevention, and clean-up regulations. Because the costs of Title IV would be imposed on businesses as diverse as retail gasoline outlets, grocery stores, hospitals, car washes, automobile dealers, nursing homes, and restaurants, EPA should have a more flexible standard so that its rules address the leakage problem on a cost-effective basis. Putting the EPA response in a regulatory strait-jacket places hundreds of thousands of small businesses at risk of great costs, possibly forcing many out of business, without any real expectation that the proposed legislation effectively would solve the leakage problem. Accordingly, we propose that consideration of Title IV be deferred until EPA completes its study.

If legislation this session is deemed necessary, we propose that it provide a date certain for EPA to report its findings and recommendations to Congress. In addition, an inventory control and reconciliation requirement could be included in the bill. Daily inventory monitoring is a cost-effective and reliable method for small business tank owners and operators to detect and minimize tank leaks.

We are equally concerned with H.R. 5640's extension of "Superfund" responsibilities and liabilities to owners and operators of underground storage tanks. Your proposed legislation would create administrative burdens for small businesses which would become subject to Superfund's notification requirements for "releases." Superfund was enacted by Congress to clean-up hazardous wastes at abandoned waste sites rather than to oversee the storage and dispensing of valuable commercial products. Moreover, Superfund's joint and several liability provisions will have a severe negative impact on the insurability and operating costs of small businesses.

The above proposed approach provides a reasonable first step toward addressing the leakage problem in a manner that will not limit EPA's ability to develop the necessary information and control options. We are concerned that EPA will be constrained in devising a system that is adequately flexible to meet small business capabilities. Indeed, the failure to grant this flexibility to small business could well result simply in small businesses being unable to meet the bill's requirements, thus, harming rather than helping the situation. Accordingly, we suggest, to the extent that any legislation is deemed necessary at this time, that it be limited to directing EPA to complete its study and to report back to Congress within a reasonable time and to imposing an inventory control and reconciliation requirement.

Yours very truly,

Frank S Swain

Frank S. Swain
Chief Counsel for Advocacy

cc: Committee Members

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

JUN 15 1983

Honorable Parren J. Mitchell
Chairman
Committee on Small Business
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I understand that Congressmen Skelton and Hiler have requested that the Committee on Small Business take jurisdiction on H.R. 2867, the bill reauthorizing the Resource Conservation and Recovery Act (legislation governing hazardous wastes). H.R. 2867 raises important small business issues which deserve informed consideration by your Committee. This letter is to discuss small business impacts of two provisions of the bill, regarding small quantity generators of hazardous wastes and land disposal requirements.

Small Quantity Generators

Section 3 of this bill requires EPA to regulate, from cradle to grave, hazardous wastes from generators of 100 - 1000 kg/mo. It further requires all such wastes to be placed in regulated hazardous waste sites. Businesses that generate these small quantities are primarily in the service and retail sectors, unlike generators of large quantities who are usually in the manufacturing sector. The proposed legislation may affect over one million small businesses, including dry cleaners, auto dealers, schools, hospitals, hardware stores and service stations.

While some regulation of hazardous wastes from these businesses is advisable, we believe that EPA must exercise flexibility in designing appropriate hazardous waste management requirements for the hundreds of different varieties of small generators. The current bill does not provide EPA this ability. When the House last considered this issue in 1982, H.R. 6307 was amended on the House floor in response to small business concerns about the lack of flexibility in the areas of storage, recordkeeping, reporting, accumulation, and container requirements. The current House bill, H.R. 2867, does not provide EPA with adequate discretion. The bill requires that all hazardous wastes from generators of between 100 and 1000 kg/mo. be sent to Subtitle C (hazardous wastes) sites only. This prohibits EPA from determining the feasibility of permitting small generator waste to go to Subtitle D (sanitary landfills) sites in selected instances. As we indicated last year, the requirement to use Subtitle C sites exclusively is environmentally unnecessary and economically unwise (see later discussion).

In contrast, S. 757, the bill now being considered by the Senate, directs EPA to regulate such wastes after a study and in a manner which "adequately protects human health and environment." It admits the possibility that the use of Subtitle D sites may be appropriate for certain small generator waste. Specifically, the bill provides EPA the flexibility to specify what substances and under what circumstances small generator waste can be disposed of at Subtitle D sites.

The House bill appears to be predicated on the notion that all hazardous wastes must go to a hazardous waste site, despite differences in the degree of hazard, the nature of its containerization, its mobility in the landfill, and its volume. We are not aware of any facts raised in the hearings, the Office of Technology Assessment (OTA) reports, or in EPA rulemaking documents that would support such an approach. There are at least five examples of sound management practices at Subtitle D sites which will adequately protect human health and the environment (see Appendix). These practices are currently in use. In general, these approaches either render the hazardous wastes non-hazardous or prevent the movement of wastes outside their containers. For example, corrosive materials can be neutralized by mixing them with a strong alkalide solution such as sodium hydroxide, which leaves a non-hazardous salty water solution. Toxic heavy metals, such as zinc and copper, can be precipitated out of sludge by a chemical process that is currently used by reclaimers of waste from machine tool manufacture. These procedures, in addition to those discussed in the Appendix to this letter, assume notification of wastes to the transporter and operator of the Subtitle D site. Discussions with environmentalists, EPA and industry groups have indicated that these treatment and disposal practices are being used today and are environmentally sound. Further study should yield even more examples of reasonable treatment strategies for use in regulatory decisionmaking.

In many areas, there are few hazardous waste sites for the thousands of small generators to use. For example, in Florida, according to EPA, there are only 5 hazardous waste landfills. Based on the 1977 Bureau of the Census Statistics, there are a minimum of 6500 small generators to be regulated in that state. This figure includes 1,969 dry cleaners, 457 hardware retailers and 4,208 automotive repair and service stations. This minimum does not include a large number of hospitals, schools, paint retailers and many others. In addition, the specific types of hazardous waste produced by these and other small generators are so diverse that blanket regulation would be inappropriate. The many thousands of hazardous waste products can be controlled by as many as ten different technologies.[1] Before requiring uniform regulation of all hazardous waste, alternative strategies for managing particular classes of waste should be investigated.

Both OTA and EPA have recognized the need for a comprehensive study in this complex area of regulation. In late 1982 the EPA initiated a two-year, half million dollar study which is to evaluate (1) the types and quantity of waste generated; (2) the waste management practices of small quantity generators, and (3) various state strategies for controlling small generator waste. Such in-depth analysis is essential for responsible agency regulation. In light of the timely performance of the study, the admitted complexity of the matters involved, and the considerable cost of using only Subtitle C sites[2], it is important and reasonable to include the study results into the plan for development of regulations in this area.

I believe that reasonable regulation of small generators will result in greater voluntary compliance and will limit enforcement problems. If Congress permits the agency to devise economically and environmentally acceptable options, environmental protection will be enhanced, not reduced.

In summary, I strongly agree that the small generator "loophole" should be closed. However regulations should be based on informed judgments reached in a deliberative rulemaking process, rather than chiseled into stone by Congress without adequate data.

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[1] See Technologies and Management Strategies for Hazardous Waste Control, prepared by Office of Technology Assessment, March, 1983, p. 210.

[2] We believe that it would be preferable to upgrade Subtitle D requirements at a lower cost than to force all wastes to go to Subtitle C sites that must meet many costly restrictive requirements.

Landfill Regulations

H.R. 2867 aims to achieve the important goal of reducing land disposal of hazardous waste to the extent necessary to adequately protect human health and the environment. It directs EPA to set a schedule within 6 months of enactment for determining (1) which wastes are candidates for ban from land disposal and (2) which of the above may be nonetheless safely disposed of in or on the land. As made clear in the House Report on H.R. 2867, not all hazardous wastes subject to review are appropriate for ban from land disposal. H. Rept. 98-198, part I, pp. 33-34. The specific disposal technology, site-specific factors and/or characteristics of the particular waste may render the waste suitable for land disposal. The Committee offers several illustrations, including waste containing heavy metals that can be immobolized by certain pH levels in soil and corrosive wastes.

Given this acknowledgement that a complete prohibition of land disposal is unnecessary, the bill ironically provides for an automatic ban of all methods of land disposal for the whole universe of hazardous wastes if the EPA fails to promulgate rules within its specified time period. Such an approach punishes small businesses which generate waste that is suitable for land disposal for the possible future inaction of EPA (see Minority Views, H. Rep. 98-198, Part I, pp. 116-117). A mandatory landfill ban would significantly increase treatment and disposal costs for small businesses, while affording unmeasured and uncertain increases in protection to human health and the environment. Such an increase in treatment and disposal costs would likely increase the practice of "midnight dumping." EPA should be permitted the flexibility to determine which wastes under which particular circumstances are appropriate for land disposal. In addition, it should have full authority to investigate alternative treatment and disposal technologies for those wastes which pose significant threats to human health and the environment if disposed of in the land.

H.R. 2867 does not condition its prohibition on land disposal upon EPA findings of available and adequate alternatives for managing hazardous waste. Such lack of planning could result in an even more hazardous scenario than currently exists. Prior to banning hazardous waste from land disposal, it is imperative that EPA determine the availability, feasibility and safety of alternative methods for the storage, treatment and disposal of hazardous waste.

Summary

I believe that H.R. 2867 addresses important envrironmental concerns; but sweeps overbroadly in two areas of importance to small business; namely (1) the requirement that all hazardous wastes be disposed of in regulated hazardous waste sites regardless of alternative, safe waste management methods, and (2) the prohibition of all land disposal whether or not safe alternatives exist or are necessary.

Yours very truly,

Frank S. Swain
Chief Counsel for Advocacy

APPENDIX

The following are examples of current industry practices of handling small quantities of hazardous waste at Subtitle D sites, while affording adequate protection to human health and the environment. Since off-site treatment of hazardous waste is often cheaper than treatment on-site, as is often the case with water pollutants, these procedures should be available at the Subtitle D site.

(1) Neutralization of Corrosives - Commonly used acidic materials can be mixed with a strong alkalide solution such as sodium hydroxide to neutralize the substance's corrosivity. The solution which remains is a salty water which is readily disposed of at the non-hazardous waste site.

(2) Neutralization of Ignitables - Similarly, ignitable waste material resulting from chemical manufacture can be neutralized by a strong detergent to eliminate its ignitable quality.

(3) Absorption of Ignitables - Absorbent clay material ("fuller") can be added to liquids and semi-solids to convert them into solids, eliminating the possibility of ignition. This process is currently employed to remove the hazard of paint wastes.

(4) Precipitation of Heavy Metals - Sludge containing metals such as copper and zinc can be precipitated out by a chemical process. This procedure is currently employed by metal reclaimers from wastes from machine tool manufacturers.

(5) Immobilization of Heavy Metals - Wastes containing heavy metals can be disposed of in landfills where the soil will retain a sufficiently high pH level in the long term. Soil with a sufficiently high pH level will act to immobilize the hazardous constituents of the waste.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

JUN 29 1984

Honorable Don Ritter
House of Representatives
Washington, D. C. 20515

Dear Congressman Ritter:

Thank you for your response of June 8th to our letter to Congressman Florio concerning the underground storage tank provisions in H.R. 5640. Your letter has unfortunately equated our preference for a more flexible and less expensive regulatory scheme with a lack of appreciation for both the severity of the problem and the need for a Federal response. We agree that a serious hazard exists, and advocate comprehensive legislation which requires effective and flexible Federal regulatory action. Your response gives us the opportunity to clear up some misconceptions regarding our position and the small business position on this issue.

Our disagreement with the legislation is solely with regard to the proposed solution and its unnecessary adverse small business impact, and not with the urgency or importance of the health problem. Experience has shown that Federal legislative intervention, particularly involving an inflexible regulatory scheme, is often not the best solution to a problem, however serious. I believe that legislation which would require the EPA to report its recommendations and regulatory activities to Congress and to impose an inventory control and reconciliation requirement would be a better alternative. The inventory requirement in addition to EPA regulatory controls provides an effective Federal regulatory solution that addresses the problem.

In contrast to the belief expressed in your letter, I continue to believe the facts clearly show that this legislation would impose a severe adverse impact on thousands of small businesses. We have closely examined only two of the many requirements to be placed on small businesses by this bill, the leak detection and tank tightness requirements. Even using your lower costs for leak detection equipment, an affected small business, assuming one site with tanks, would be required to spend between $3500 (new) and $6000 (retrofit) for leak detection equipment[1] and approximately $4000 for tank tightness testing for these two provisions alone.[2]

These costs, which were considered onerous for farm owners and homeowners, are equally onerous for the tens of thousands of small businesses whose profits are so modest that this new fixed cost would have a tremendous effect on their cash flow and ability to stay in business. Based on the above and other costs, we are certain that many small businesses will be seriously and adversely affected.

In addition to our concerns over the costs of tank tightness and leak detection requirements, there is considerable doubt that such measures will be effective in preventing leaks. From discussions with insurance industry representatives and others, my staff has learned the leak detection industry has not yet produced a reliable system. Some insurance underwriters have also expressed doubts that the existing systems are better at reducing the number and severity of leaks than effective inventory control monitoring. Some insurers require use of an inventory control system to qualify for reduced premiums and are convinced that such systems are effective. As to tank tightness testing, there is general agreement among EPA and industry sources that the test gives questionable results.

Supporters of the legislation suggest that the cost of installation of leak detection equipment is offset by the potential cost savings in avoidance of clean-up expenses. We have three difficulties with this argument. First, and most significant, both the frequency of spills and the average cost per spill are far too low to warrant this expense. For example, one group of petroleum marketers reports that within a group of 10,000 stations (with an average of 4 tanks each), there were only 40 reported leaks over a 2 year period. None of these leaks involved more than a localized clean-up. The average total clean-up cost (including equipment replacement) ranged between $20,000 and $40,000. Secondly, both the reliability of leak detection systems and their superiority over inventory controls are in serious question. Thirdly, the up front costs simply cannot be borne by a large proportion of the affected small businesses. Therefore, the capital expenditure required for a leak detection system cannot be justified.

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[1] In our letter to Congressman Florio, the leak detection figure should have been "up to $10,000 per site," not "up to $10,000 per tank." Based on my staff's discussion with your office and others, the difference between our figures and yours reflect the difference between liquid detection systems (less expensive) and vapor detection systems.

[2] For example, the National Oil Jobbers Council report that the typical jobber has six gasoline stations (average of 4.1 tanks/station) and an after-tax profit of $26,000. Thus, this bill requires a capital expenditure of $24,000-60,000 for leak detection equipment and $24,000 for tank tightness testing. This expense far exceeds the financial capability of the average jobber.

I do understand that H.R. 5640 attempts to limit some of the adverse impact of this legislation on certain small businesses by exempting farm and residential heating oil tanks from all requirements of the bill. However, I believe that small businesses with similar limited financial means, such as lumber dealers, gasoline retailers and grocery stores should receive exemptions from some or all of the bill's requirements. An exemption for farms confirms that regulatory alternatives of some type are also warranted for other types of small businesses. However, other small businesses are not receiving this special treatment. For example, the legislation does not consider the flexible regulatory and non-regulatory options of:

(1) exemptions or less costly requirements for small tanks, protected tanks, or tanks in areas without the potential for groundwater contamination;[3]

(2) general permit requirements tailored to the nature of the hazard and the affected business;

(3) insurance requirements, either through mandatory financial responsibility requirements or through the imposition of liability through Federal or state legislation;

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[3] For example, it is generally recognized that standards for new tanks in Arizona, with non-corrosive soils, should be different from new tank standards in other locations. EPA's existing groundwater strategy also takes into account the type and location of the nearest groundwater supply. Such distinctions are not made in this legislation.

(4) reliance on all other voluntary and mandatory Federal, state and local activities (including those mentioned in our June 1 letter to Congressman Florio).

I hope this comment has clarified our position concerning H.R. 5640. We agree that the leaking tank problem is a serious one but contend that the appropriate solution is a Federal regulatory scheme which allows the EPA the flexibility it requires to most effectively deal with the problem. My staff has discussed this legislation with Congressional staff and others and we agree that appropriate legislation would permit this flexible approach and would require EPA to issue regulations including:

(1) performance standards for new underground storage tanks;

(2) consideration of other regulatory options including inventory control and reconciliation; and

(3) clean-up requirements after a release from an underground storage tank.

I applaud the attention that you are drawing to this significant and urgent health hazard. You have undoubtedly helped to focus the attention and resources of the government and the private sector to address this problem.

I look forward to working with you in addressing this issue. If you have any questions, please do not hesitate to contact me or Kevin Bromberg of my staff at 634-6115.

Yours very truly,

Frank Swain

Frank S. Swain
Chief Counsel for Advocacy

Senator D'AMATO. Frank, let me ask you to take a look at the small local hardware store that has paint on hand, that has a certain amount of turpentine, and other similar products. Have you analyzed S. 606 and S. 51 with respect to what requirements, if any, these proposals would have on that small businessman, that hardware store?

Mr. SWAIN. In general, S. 51 and S. 606 both have an exemption level. S. 606 would exempt any facility from reporting with less than 100 kilograms of hazardous substances. A kilogram is 2.2 pounds. I know a gallon of paint is probably about 5 to 6 pounds, so you can do the arithmetic. It probably wouldn't take a whole lot of paint to meet that threshold.

S. 51 would exempt stores of less than 6000 kilograms who have less than 10 employees. That is a bit of a larger standard, but, again, I haven't discussed it individually with any trade associations to find out whether they felt, in the retail industry in particular, what impact this would have on their particular companies.

Both bills would apply not just to manufacturers but to facilities that generate, treat or store substances in question. That, presumably, could be wholesalers, distributors, retailers, and so on.

Senator D'AMATO. I would note that S. 606 does give the EPA Administrator the right to increase the 100 kilogram threshold amount with respect to categories of retail establishments which deal directly with the public. What we are attempting to do is to create that opportunity by which the EPA Administrator would promulgate a series of exemptions dealing with the hardware store, for example, and the dry cleaning establishment and others.

Mr. SWAIN. I think that approach generally is the one to take. The EPA, which of course has the experience of trying to regulate these substances no matter where they occur, whether they occur with the manufacturer or whether they end up in the groundwater, really has the expertise to know where these problems lie. They ought not to be forced to target their enforcement efforts in sort of a traffic cop like way but to go ahead and meet the issue where it is most significant which I would assume, in most cases, would not be at the consumer end.

Senator D'AMATO. Would you care to comment with respect to the impact, if any, that you see on the cost of doing business as it relates again to that aspect of S. 51 that would require notifying and determining where the various toxic substances were discharged?

Mr. SWAIN. Yes. That is, in fact, the next point in our statement. Both bills would require an inventory requirement. Of course, the details differ somewhat. What we are suggesting, of course, is that the exemptions be as high as practicable and that the EPA be given the maximum amount of flexibility not only to choose exemption levels but maybe to define more narrowly what the most hazardous substances are that we are really looking for.

The Lautenberg bill goes ahead, as Senator Lautenberg ably described a few moments ago, to require that when there is a discharge the annual and monthly total emissions or discharge of each hazardous substance will be reported from a variety of sources.

So, again, to take your hardware store, for example, under my reading of Senator Lautenberg's bill, if that hardware store has what they would call a discharge or emission of some of these hazardous substances, they would be required to file reports with the EPA and various local officials.

The point we really make in the statement is that the technology may well be there for major companies who spend a lot of time taking a look at this, but for a smaller company that is a secondary user or it is a very small part of their process, we are not sure that the technology is there to enable them to give a very specific report of what is happening when. Now, they are already regulated under RCRA, my understanding is, if they discharge over 100 kilograms a month. They are already regulated that when they discharge hazardous wastes into the environment, they have to make appropriate reports of that to the EPA.

However, we think that at least as is outlined in S. 51, that reporting scheme for emissions is much broader and presumably might rope in several hundred thousand additional businesses and ask them to do something that they may or may not do. Let me give you an example. I went to Illinois not long ago. I was invited out there by the Illinois Petroleum Dealers Association, and they were dealing with the issue of how to comply with the LUST provisions—the underground storage tank provisions.

There are no fewer than 10 or 12 different companies selling different kinds of products to the people there and telling them that this was the way to comply with the Federal regulation. I asked one of the spokesmen from, I believe, one of the major trade associations in the area what they thought about that, and they said nobody knows which technology is best. Nobody knows which product is best. So, there is a real seller's market out there in technology to determine when underground storage tanks are leaking.

I would suggest that the same thing might happen here. If the Congress goes ahead and immediately enacts a very specific discharge requirement and reporting requirement, we are going to have a lot of people running around selling small business people a lot of things that may or may not work, but it is going to take several years before it is all sorted out. I imagine a lot of small firms will spend a lot of money with a lot of devices that probably aren't really worth the expenditure.

I would suggest that the most important thing is the inventory reporting requirement, and that the discharges are generally adequately regulated under other statutes that are already on the books and currently being implemented by the EPA.

Senator D'AMATO. Senator Trible?

Senator TRIBLE. I have no questions at this time, Mr. Chairman.

Senator D'AMATO. Frank, we want to thank you so very much for your analysis.

Mr. SWAIN. Thank you, Mr. Chairman. I would like to reiterate our offer to work with the committee staff and anyone else interested in that.

Senator D'AMATO. We look forward to that.

Our next witness will be Dr. John Moore, Assistant Administrator for Pesticides and Toxic Substances of the EPA.

STATEMENT OF DR. JOHN A. MOORE, ASSISTANT ADMINISTRATOR, OFFICE OF PESTICIDES AND TOXIC SUBSTANCES, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY JAMES MAKRIS, DEPUTY DIRECTOR, HAZARDOUS RESPONSE SUPPORT DIVISION

Dr. MOORE. Thank you for taking the time for us. With me is James Makris, Deputy Director of the Agency's Hazardous Response Support Division, and very instrumental in the Agency's reevaluation of efforts post-Bhopal relating to issues of particular interest to you today, I believe.

I would like to highlight my testimony, Senator, and ask that the complete document be inserted for the record.

Senator D'AMATO. So ordered.

Dr. MOORE. Thank you.

As you may know, last week, EPA's Administrator, Lee Thomas, testified before the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce and discussed the Agency's air toxics strategy. This strategy sets forth an expanded and significantly redirected Federal program for the regulation of toxic air pollutants. He described two major elements of the air toxics problem: those related to routine releases and those related to accidental releases.

EPA decided that new thrusts were necessary to aid communities in their efforts to prepare for and respond to major chemical accidents. The Agency will play a major role in providing technical assistance and guidance to local communities. We have designed a program with these two main goals in mind: Increased commitment to emergency preparedness and response efforts, and a special focus on those acute hazard chemicals that pose special risks in accident situations.

The Administrator also announced the Agency's support for the concept of community right to know. It is the community that is directly affected when an accident occurs. Accordingly, there must be a significant lead role for the community in developing appropriate contingency plans.

The Agency has considered the various elements of such a program. Several important points have emerged.

First, we must focus on chemical risks that are of principal concern. The public is not well served, in my opinion, by being overwhelmed with extraneous information. This diverts their attention from the most serious hazards. It is essential to provide a focused chemical list to communities from which they may determine how best to address the potential for serious accident.

EPA has adopted such an approach in developing its list of acutely toxic chemicals. This list will identify substances that are likely to cause serious health effects, such as liver dysfunction, lung edema, or neurotoxicity, or other types of effects, from short-term, high level exposure. We will also factor in chemical characteristics such as volatility, reactivity, and ignitability in compiling this acute list. Factors such as these add to the potential for increased human exposure in the event of an uncontained release.

The need to develop this list was evident after our review revealed that no existing list was quite on target. Most existing lists are based on criteria other than those that would indicate the potential for rapid dispersion of toxic chemicals. Other lists we evaluated were too narrow in that they did not include all chemicals of potential concern, such as process intermediates. Our plan for this acute hazards list is that it be made available in the early fall.

Identifying a targeted list of chemicals such as I have just described primarily addresses hazard. Hazard is but one piece of the equation used to determine risk. Exposure is also keyed into that effort. We feel that any community right to know program must have this balanced perspective of both hazard plus the potential for exposure. It therefore should incorporate a mechanism that considers factors that are likely to lead to accidental exposure.

One should evaluate the types of facilities that are included in such a program. Many business in this country, on occasion, store chemicals including drugs or pesticides that could, under particular circumstances, cause adverse effects on human health or the environment. Requiring every facility that stores any amount of a potentially hazardous material to fill out forms, hand out fact sheets, and even, in some instances, apply for permits or prepare emergency plans is neither necessary nor desirable.

Rather, it is desirable to evaluate the way in which an acute hazard chemical is handled or to identify the amount that is stored at a particular site in order to determine the potential for concern.

The Agency plans to help local communities address this concern by developing site specific guidance to accompany this acute hazards list I have described. This guidance will be a series of questions related to specific site characteristics, such as those described above, plus such factors as the number of people within close proximity to that facility.

Once the chemicals and the covered facilities are identified, one must finally determine the community contingency plan needs. Local governments, using our scientific information and technical guidance, should make those decisions about whether to development emergency preparedness and response plans.

EPA is taking a number of steps to enhance State and local capability for emergency preparedness and response. By adding to its regional staff and establishing a headquarters staff, the Agency will offer a number of needed services to States and localities in the area of contingency planning, technical assistance, training, and response. EPA will revise guidance, increase resources, and provide expanded staff training to enforce reportable quantity requirements, as well as recordkeeping and reporting under the Agency's Toxic Substances Control Act. These actions will provide the data to assure a prompt response to emergencies and will also achieve a higher level of comprehensive reporting on spills and releases upon which to base contingency planning.

The Agency is also taking steps to coordinate and improve national policy and planning for emergency preparedness and response through the national response team, the regional response teams, and the national contingency plan. The national response team which EPA chairs with the Coast Guard as vice chair includes among its membership representatives from every Federal agency having significant hazardous substance emergency preparedness and response authorities. Its regional component includes the same Federal agencies plus representation from State and local governments.

A preparedness committee has been established and a national assessment of State and local emergency preparedness capability is currently being conducted. The national contingency plan has just undergone another extensive revision which strengthens it in the essential areas of coordination, planning, and response to hazardous substance emergencies. The Agency's environmental response team is increasing its training efforts targeted for State and local personnel and adding staff to increase its capability of providing technical assistance to States and local governments in response as well as in planning and preparedness.

To summarize, developing an acute hazards list, providing it to communities, and assisting and encouraging them to develop emergency preparedness and response plans where appropriate, will accomplish a major objective of any community right-to-know program, to increase a community's knowledge of and preparedness for potentially hazardous chemicals in its area.

There are other instances in which chemicals with toxic potential may be used or released. EPA believes that interested citizens in the community should be able to learn of such instances. The Agency encourages industry to make fact sheets prepared under other laws, such as the OSHA act——

Senator D'AMATO. Doctor, let me ask you a question at this point, because we have two other panels.

[The prepared statement of Dr. Moore follows:]

STATEMENT OF
DR. JOHN A. MOORE
ASSISTANT ADMINISTRATOR
OFFICE OF PESTICIDES AND TOXIC SUBSTANCES
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

JUNE 18, 1985

Mr. Chairman, Members of the Subcommittee:

I appreciate the opportunity to discuss with you the issue of community right-to-know legislation.

As many of you may know, as a toxicologist I have been involved throughout my professional career in the testing and evaluation of chemicals. Now, in heading up EPA's Pesticides and Toxic Substances program I am called upon every day to consider the risks posed to society by the myriad chemical substances to which people in this country are exposed. I find this background quite helpful in addressing the issue before us today.

Last week the EPA Administrator testified before the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce and discussed EPA's Air Toxics Strategy. This strategy sets forth an expanded and significantly redirected Federal program for the regulation of toxic air pollutants. He described two major elements of the air toxics problem: those related to routine releases, and those related to accidental releases.

EPA decided that new thrusts were necessary to aid communities in their efforts to prepare for and respond to major chemical accidents. The Agency will play a major role in providing technical assistance and guidance to local communities. We have designed a program with these goals in mind, one which includes increased commitment to emergency preparedness and response efforts and which will focus on those "acute hazard" chemicals that pose special risks in accident situations.

The Administrator also announced the Agency's support for the concept of community right-to-know. The community is directly affected when an accident occurs. Accordingly, there must be a significant lead role for the community in developing appropriate contingency plans. In my testimony I will outline the conceptual framework which should be applied to the issue of community right-to-know and how the Agency's initiatives complement this approach. Then, I will give the Agency's general assessment of some of the proposed legislative approaches to community right-to-know.

As I stated earlier, EPA supports the concept of a community right-to-know program, and has considered the various elements of such a program. Several important points have emerged from our analysis:

First, we must focus on chemical risks that are of principal concern. The public is not well served by being overwhelmed with extraneous information. This diverts their attention from the most serious hazards. It is essential to provide a focused chemical list to communities from which they may determine how best to address the potential for serious accidents.

EPA has adopted such an approach in developing its list of acutely toxic chemicals. This Acute Hazards List will identify substances that are likely to cause serious health effects, such as liver dysfunction, lung edema or neurotoxicity, from a short-term, high level exposure. We will also factor in chemical characteristics such as volatility, reactivity, and ignitability in compiling this Acute Hazards List. Factors such as these add to the potential for increased human exposure in the event of an uncontained release. For example, reactivity reflects the tendency of a chemical to react violently either with itself or upon contact with air or water. Such reactive chemicals must be specially handled in order to avoid the reaction. This can be accomplished through specialized storage or refrigeration. If a chemical is released when stored under such special conditions, then the potential for dispersion, and therefore for human exposure, can be significant.

The need to develop this list was evident after our review revealed that no existing list was quite on target. Most existing lists are based on criteria other than those that would indicate the potential for rapid dispersion of toxic chemicals. Other lists we evaluated were too narrow in that they did not include all chemicals of potential concern, such as process intermediates. Our plan is for this Acute Hazards List to be made available in the early fall.

Identifying a targeted list of chemicals such as I have just described primarily addresses hazard. Any community right-to-know program must have a balanced perspective. It therefore should incorporate a mechanism that considers factors that are likely to lead to accidental exposures. One should evaluate the types of facilities that are included in such a program. Many businesses in this country, on occasion, store chemicals (including drugs or pesticides) that could, under particular circumstances, cause adverse effects on human health or the environment. Requiring every facility that stores *any* amount of a potentially hazardous material to fill out forms, hand out fact sheets, and even, in some instances, apply for permits or prepare emergency plans is not desirable.

Rather, it is desirable to evaluate the way in which an acute hazard chemical is handled or to identify the amount that is stored at a particular site in order to determine the potential for concern. For example, an acutely toxic chemical will be of more concern if it is stored in large rather than small quantities over extended periods of time, or if it is processed under extreme rather than standard temperature and pressure conditions.

The Agency will help local communities to address this concern by developing site-specific guidance to accompany the Acute Hazards List. This guidance will be a series of questions related to specific site characteristics, such as those described above, plus such factors as the number of people within close proximity to the facility.

Once the chemicals and "covered facilities" are identified, one finally must determine the community contingency plan needs. EPA believes state or local governments, using our scientific information and technical guidance, should make decisions about whether to develop emergency preparedness and response plans. EPA does not believe that such plans should automatically be required because the way in which a chemical is handled and stored at a site will influence significantly the nature of concern about the chemical.

EPA is taking a number of steps to enhance state and local capability for emergency preparedness and response. By adding to its Regional staff and establishing a headquarters staff, EPA will offer a number of needed services to states and localities in the area of contingency planning, technical assistance, training, and response. EPA will revise operating guidance, increase resources, and provide expanded staff training to enforce reportable quantity requirements, as well as recordkeeping and reporting under TSCA. These actions will provide the data to assure a prompt response to emergencies and will also achieve a higher level of comprehensive reporting on spills and releases upon which to base contingency planning.

EPA is taking strong steps to coordinate and improve national policy and planning for emergency preparedness and response through the National Response Team (NRT), the Regional Response Teams (RRT) and the National Contingency Plan (NCP). The NRT, which EPA chairs with the Coast Guard as vice-chair, includes among its membership representatives from every Federal agency having significant hazardous substance emergency preparedness and response authorities and responsibilities; its Regional component, the RRTs, include the same Federal agencies plus representation from state and local governments. A preparedness committee has been established and a national assessment of state/local emergency preparedness capability is currently being conducted. The NCP has just undergone another extensive revision which strengthens it in the essential areas of coordination, planning and response to hazardous substance emergencies. The Environmental Response Team is increasing its training efforts targeted for state and local personnel and adding staff to increase its capability of providing technical assistance to states and local governments in response as well as in planning and preparedness.

To summarize, developing an Acute Hazards List, providing it to communities, and assisting and encouraging them to develop emergency preparedness and response plans where appropriate, will accomplish a major objective of any community right-to-know program: to increase a local community's knowledge of and preparedness for potentially hazardous chemicals in its area.

In addition to accident situations, there are other instances in which chemicals with toxic potential may be used or released. EPA believes that interested citizens in a community should be able to learn of such instances. The Agency encourages industry to make fact sheets prepared under other laws, such as OSHA, available to local and state public safety officials, libraries, and to members of the community surrounding a plant who request them. The fact sheets should, to the fullest extent possible, identify the chemicals being manufactured, processed, stored, or used, and provide information on the effects caused by exposure to the chemical together with appropriate treatment methods. All materials should be in plain English so that members of the public who obtain the data can understand and use the information presented.

The Administration has not yet taken a position on community right-to-know. However, I would like to offer our views on the subject. We share the view that citizens are entitled to information about the potential threats in their communities. To that extent, EPA supports a program which would result in the sharing of information by industry. Our approach differs from these proposals in matters of method and degree.

It has been suggested that a mechanism for implementing a community right-to-know program would be for EPA to collect the relevant information, and disseminate it to appropriate state and local bodies. EPA believes that it is much more efficient and effective for society as a whole if facilities provide information directly to local officials. This would allow the information to go directly to those who can use it most effectively.

Most bills contain lists of hazardous substances that are too broad in scope and in certain criteria, yet often exclude some important chemicals. We believe that a focused list of chemicals such as the Acute Hazards List that we are currently developing would provide communities with a manageable program for determining how best to address their specific potential problems as well as providing the capability to expand to include other chemicals of local concern.

While we agree that all types of chemicals and mixtures should be considered as candidates for the Acute Hazards List, clarification of the mixtures is needed. Mixture percentages should be determined for each individual substance through regulation rather than by setting an arbitrary figure in a statute.

Most bills require (perhaps inadvertently) a large spectrum of facilities to be covered by the provisions set forth in them. We believe that this will require many industries, including small businesses, to comply with regulations when the quantity of the hazardous substance they possess poses a minimal, if any, threat to a community. I note that Mr. Florio's CERCLA reauthorization bill states that only facilities with a significant quantity of a hazardous substance, in which a release could pose a reasonable endangerment, are covered.

Recent statements by state and local officials and industry have made clear the need for uniform standardized formats for communities to collect information from industry. The EPA Acute Hazards List will achieve this consistency as well as provide guidance on how to use the information.

Emergency bulletins notifying appropriate local officials of a release which may threaten human health and safety and the environment would be helpful. The current reporting notification requirements under CERCLA establishes release standards and also notification of the National Response Center. This will assure that all Federal emergency response mechanisms, including the Environmental Response Team, will be available to offer any technical assistance if needed.

Fact sheets, status sheets, and emergency bulletins should be available at the covered facilities and sent to designated local officials. We believe that this information should also be available to the public.

We believe that emergency response plans should be encouraged but not required by Federal statute. EPA will continue under CERCLA, but with greatly increased emphasis and resources, to provide guidance, training, and technical assistance to those local governments that do develop emergency response plans.

In conclusion, while the concern and intent embodied in the various community right-to-know initiatives is well placed, many complicated issues need to dealt with before an effective bill can be developed. We are more than willing to work towards a focused and well-balanced community right-to-know program that will inform communities of the acutely hazardous substances and their potential threats, based on EPA's Acute Hazards List, as well as improving communities' ability to handle effectively any such emergency. I will be happy now to take your questions.

Senator D'AMATO. To break it down into plain, simple, everyday occurrences, on more than one occasion, numbers of my constituents have, at the very least, certainly been frightened and in some cases, have become ill. In some cases, they have evacuated their homes and the areas in which they work as a result of chemical discharges, vapors, et cetera from plants in adjacent areas. I am talking about my constituents in Staten Island and New Jersey where the discharges are. I know you are familiar with that.

I would like for you to talk to me about all this work. There has been no tangible, discernable activity which gives any real concrete assurance to the people who live in our country that there is a process by which they have the right to know, that information is disseminated, and that procedures in terms of what can and should be done will be made available to emergency services and others on the State and local level. You see, I am still unsure as to what we need to have in S. 606—and I have no pride of authorship. We put this bill forward as a vehicle by which to begin to move on this issue, and Senator Lautenberg has used S. 51. I think that we have to do something in this area.

I have a question. Does the Toxic Substances Control Act give EPA tremendous authority to gather information to regulate dangerous chemicals, even to require certain kinds of quality control, and do you really need additional legislation to achieve many of the goals of the so-called industrial survey?

So, I ask you, and I say, if you have all this power, which apparently my legal eagles tell me you have, why haven't you used it? And if you disagree with me, I would like for you to educate me. What assurance do we have, and I use Staten Island as an example, but it is not confined to Staten Island, that people may be able to live in close proximity, particularly to the chemical plants.

I think that maybe our legislative proposals may go a little overboard. I don't think the EPA and other conservationists are really worried about the local dry cleaner. I mean, we have laws on the books that deal with whether or not he is discharging those substances illegally, or the local gasoline station dealer whose underground tanks start leaking. We have plenty of local and State and Federal statutes dealing with these areas on the books.

We are concerned about the kind of discharge that takes place and people don't know whether or not it is dangerous if they breathe it in. If a cloud comes over, should we run? What should we do? Should we stay in the house, turn off the air-conditioning, rush to the hospital? Does the local hospital know what to do? Do you wait until people vomit? How dangerous is it?

Something is missing. We are not doing something. Maybe I just don't know, but if I don't know, what about all those residents on Staten Island? Do they know?

Dr. MOORE. I think one of the issues that needs to be focused on is, what is it we are trying to cure? What are we trying to prevent? One of the problems we have had with the variety of legislation that has been proposed——

Senator D'AMATO. Bhopal told you and showed you something that we say, obviously, oh, it could never happen here. I don't know whether it could ever happen here. However, it did happen somewhere.

But what if one person loses his or her life or is seriously impaired for a lifetime as a result of a discharge, whether it be in the air or the waterways? It all depends how we view this, and it is in the eyes of the beholder. If it is you or your family, it is a tragedy. You may say if it is someone else that it is not such a terrible thing. So, people are concerned.

Now, what about the discharge—what happened in New Jersey? Can you tell this committee what happened there?

Dr. MOORE. Senator, there are a variety of circumstances that happened in New Jersey. Let me come back to the point about——

Senator D'AMATO. No, no, don't tell me about that. I would like to know whether or not there has been an assessment. Has EPA made an assessment on those discharges in to New Jersey? You should be prepared. You should have known that the Senator from New York was going to ask this. Wouldn't I?

Mr. MAKRIS. Yes, Senator. At the moment, as you may know——

Senator D'AMATO. I don't know anything about it. I want you to tell me.

Mr. MAKRIS. Bill Librizzi in our regional office in New York is working directly with the officials in northern New Jersey specifically to try to develop a plan for a pilot project to review some of those local plants, especially those involved in the 15 releases in 18 weeks that happened around the end of this year.

Senator D'AMATO. Well, tell me about Staten Island. I want to know about those 13 or 14 releases. You see, I know they are working with the local officials in New Jersey, but what about how did it come about, what were they, were they dangerous, and how life threatening were they? Have we made any assessment on that?

Mr. MAKRIS. At the moment, we are still assessing some of the occurrences up there, but the key issues are that we have said, we think the State of New Jersey and the State of New York and the rest of the States have a high competency, especially for dealing with emergency responses. What we are doing is trying better to do the Federal job which is good science, good advice, better training, and a more realistic portrayal of the toxicity of the chemicals that might be released in an accident.

A lot of this was started before Bhopal. A good much has happened since Bhopal as we became far more sensitive to those issues. EPA, at the moment, as Mr. Thomas announced last week, is increasing its resources in all of those areas. We are suggesting that one can't solve all problems at the same time. Therefore, the acute hazards list that Dr. Moore referred to a minute ago would become what we would considered a focus to start right now. We say, look, State and local governments, here are a number of chemicals which presumably represent those most serious risks and would most likely involve loss of life or health, and we suggest that local plans be designed specifically around these particular chemicals that are going to be shown in the list.

The lists would be accompanied with sound, clear English descriptions of the chemicals, some degree of health effects, guidance on how the community might use this list, and couple all this data with some updated guidance on contingency planning. All of this would be done in conjunction with the other Federal agencies involved like FEMA, Department of Transportation, OSHA, and others who have these concerns.

We think that through this very carefully planned increased level of training, through a focused acute hazards list, through recognizing that the State and local government who have stepped out such as New Jersey and Massachusetts and have passed right-to-know laws and who are in fact proceeding with their implementation, would provide us an opportunity to take great steps in this process.

Senator D'AMATO. Tell me about the 13 discharges. Were they accidental? Was that something that is in the regular course of their business? Was it not accidental? Was it something more than what is generally done?

Mr. MAKRIS. They were accidental. The only questions for the MIC task force at EPA was that question, what happened there and could it happen here? If it could, what do we do to prevent it? If we cannot, what can we do to respond to it?

Senator D'AMATO. They were accidental.

Mr. MAKRIS. Those were all accidents.

Senator D'AMATO. How many plants were involved?

Mr. MAKRIS. Pardon me, sir?

Senator D'AMATO. There were 15 discharges in the period of about 18 weeks, right?

Mr. MAKRIS. One plant accounted for four.

Senator D'AMATO. One for four of them. What about the others?

Mr. MAKRIS. I don't have the exact numbers, but my recollection is that there were three plants that contributed at least two each, and the rest were miscellaneous individual releases.

Senator D'AMATO. That is six.

Mr. MAKRIS. Sir, one plant had four.

Senator D'AMATO. And two had two each, so that is eight.

Mr. MAKRIS. And the rest of them were individual plant releases.

Senator D'AMATO. And the other five, so that would be eight plants were responsible for 13 discharges. What about the chemicals discharged? Were they dangerous to public health?

Mr. MAKRIS. I don't recall the specific levels of danger. There were some fairly toxic chemicals, but what we did with those plants is immediately send the environmental response team for medicine from Edison, NJ, out to start determining what the essence of that problem was, and that was in fact what drove us to offer Union and Middlesex Counties some specialized training which they have accepted.

So, we have been working with Mr. Dewling specifically on how we might be able to provide some specific assistance to the industries, trying to determine what is causing the releases. Is it a matter of old plants, for example? Is it a matter of faulty management? Is it just simply episodic releases that happened in a coincidental way?

I think it is important to note that despite the continued releases, there is relatively small harm. There is an enormous potential for accidents. Obviously, the potential increases with quantity. The potential increases with the toxicity of the chemical.

I think the point that Dr. Moore was making earlier was that we are trying to deal with a highly toxic episodic release which is airborne which is difficult to escape from and trying currently to deal with the issue of volume and likelihood of escape. Taking both of those things, providing them to the local community in a manner that they can elicit information from the private sector will then allow them to better understand what is present in their community and how they can best have specific evacuation or other human protection plans against a potential release.

In addition, it would allow us to be sure that the doctors in the local area have specific knowledge and perhaps an antidotal medicine that would allow their best treatment. For example, one of the issues in Bhopal has been not that the doctors in India were incompetent but that they may not have known exactly how to treat MIC and, as a result of mistreatment, perhaps exacerbated the problem.

We believe that by providing the kind of information that deals with the chemicals in the area to the physicians that are in the area and the emergency rooms of the area, we are best able to assure a higher level of medical assistance by providing folks with information to specifically deal with protecting themselves from the chemicals that are in their area. We can better help them in that regard and by having a focus, we can undertake a do-able rather than an impossible task.

Senator D'AMATO. Are we playing catchup ball?

Mr. MAKRIS. We had started a year earlier. It is not all catchup since Bhopal. Some of the points that Dr. Moore made earlier like the national response team preparedness committee and some of the training initiatives were started last summer.

Senator D'AMATO. I want you to know I appreciate your candor. I really do. In other words, sometimes I think there is a tendency, because here you are out attempting to gather this information, et cetera, and come forward with a program to deal with these contingencies. We can become rather resentful of some of the inquiries that are made because you are striving to deal with the situation as it exists. Your candor in saying yes, is catchup ball so to speak, and we are attempting to deal with this problem now—I have a basic question. What is your need in your opinion? And if you want to color your opinion by stating that it is or is not the opinion of the administration or EPA or whatnot, that is fine, too. I know you have your positions and your job and you have a line that you have to take. I understand that.

So, if you would give me a response accordingly, in your opinion, is there a need for legislative action as outlined in S. 606 or S. 51, Senator Lautenberg's and the committee's proposal. Would you care to comment on both pieces of legislation and whether there is a need for that kind of legislative action?

Dr. MOORE. Senator, to the extent both address community right to know and formalize or institutionalize to some degree that process, I think that legislation would be beneficial. As you point out, there are similarities between the two bills. In the area of the acute toxics list, things like that, we clearly are trying to focus on issues that are very germane here to the Bhopal type of situation, identify those discrete and finite number of chemicals that can have a potential for disaster similar to that which occurred in Bhopal and make sure that we have a program in place for those chemicals first to minimize or prevent the possibility of a Bhopal occurring in this country.

Beyond that, I think you get into another area which is a legitimate issue but is outside of the acute injury associated with accidental release, and that is the preventing of something that over long-term exposure might pose some degree of carcinogenic risk——

Senator D'AMATO. Yes, they really are two separate issues.

Dr. MOORE. The solutions are different. This is why I like to distinguish between the two. They are very legitimate. I think from the standpoint of the reportable quantities requirements of CERCLA, we do address releases of a variety of these chemicals.

If I have problems with some of the approaches, it is that they are too vast in their scope. As Jim pointed out, we are trying to focus on the acute effects first. Then, I think, if you want to focus on the other kinds of effects, I believe we should do that in a more focused nature as well. Starting out with an inventory list, for example, as was suggested, that would cover something ranging from several hundred to several thousand, depending on whose legislation you are looking at, almost guarantees the agency to failure. The time limits that are also associated with complying with the requirements associated with those lists are such that it is almost impossible, with the resources the agency has, to deliver, given the vastness of the number of chemicals that are cited.

There certainly is merit, under some circumstances, to know what is happening to which chemicals on an inventory list, where those chemicals are going in the environment. I think there is no question that the approach is good, but I think it should be more focused.

Senator D'AMATO. Senator Bumpers.

Senator BUMPERS. Mr. Chairman, I may just want to submit a few questions for the record to both Senator Lautenberg and Dr. Moore, and since Dr. Moore is here, I would like to ask him this one question. What is the difference between the hazardous substances inventory provisions of the Superfund amendments of S. 51 and the communities right-to-know provisions of Senator D'Amato's bill? Is that a fair question?

Dr. MOORE. I would say the main difference is the hazardous inventory requirement which some people would point out is not necessarily vital to a community right-to-know function. It has legitimate needs in its own right and should be discussed separately, I think.

Senator BUMPERS. In other words, are they separate solutions to the same problem? Is that the way you see it?

Dr. MOORE. I think they might be a difference in the problem. Senator D'Amato's approach would supply emergency procedures on a large number of chemicals to local communities. EPA's approach is a very focused attempt to lock at acute hazards and a community's awareness and preparedness to deal with those. The hazardous inventory goes beyond that and gets into a broader area of wanting to know what the significance may well be of continuous releases over great periods of time into a variety of mediums and the need, in Senator Lautenberg's amendment, to have that information catalogued and centralized and reported in one place.

Senator **Bumpers**. I am not familiar with Senator Lautenberg's proposal and I am not that familiar with Senator D'Amato's amendment, but I assume that the community's right to know the company, that may be making a hazardous substance, would notify all of the authorities of that community, the mayor, the city council, the fire department, and all of the people who might be called upon at any time to deal with the problem.

Are there any provisions in these bills that generally tell the public what is involved? Is it just something that presumably would be held in a city council meeting and therefore would be reported on the front pages of the papers?

Dr. **Moore**. Senator, we feel that the public should have access to such information, particularly on the acute hazards types of issues. They should be aware of this. They should be aware of who has the knowledge as to what the appropriate response should be in the event there is an accidental type of release.

Senator **Bumpers**. Are there any penalty provisions if there is a failure? What if, for example, you get into those grey areas where there is some question as to the toxicity of a substance and no notice is given or maybe notice is unfairly or inappropriately given or not sufficiently given? Are there any remedies by the public against a manufacturer of a hazardous substance in that case?

Mr. **Makris**. As you know, the reportable quantity requirements are very clear. It obligates companies releasing more of a chemical than is permitted and each chemical has a threshold, either based on toxicity or one pound legislatively to report those releases. As of July 3, almost all chemicals will have a threshold of release that is based on technical analyses of their toxicity. When those releases take place, we are then notified. There is a substantial criminal penalty in the current law. We are requesting civil authority to penalize which will allow us to move swiftly against those who fail to make such reports.

It is our judgment that the very active reporting is in a way a discipline. To have to go public with a confession, if you will, that you released this chemical in excess of the reportable quantity amount is in fact difficult for companies to do and it does start them down the track toward potential liability.

We feel that more vigorous enforcement of this in the coming year and the addition of the civil penalty to the criminal penalty which is presently in the Superfund law will help us greatly in not only assisting or enforcing companies to report, but also in building a data base to allow us to generally see where these patterns of release may be. In addition, Jack has authority under TSCA 8c and 8e.

Senator **Bumpers**. Just a moment, Mr. Chairman.

I see here under Senator Lautenberg's proposal, the information has to be distributed to the President, the EPA, State and local emergency and medical authorities, state police, health, police, fire, environmental departments, public libraries, and hospitals. That is apparently the same provision included in S. 51, the Superfund bill. That gets back to the question I was asking a moment ago. These are all the people whom you would expect to be required to be notified, but how about the public in general, just so they would have knowledge of it?

Mr. **Makris**. It is EPA's position, and we intend under the acute hazards list, to provide that list of chemical information directly to the local community at all levels. We would expect that would then become a basis on which they would be able to work with industry to acquire more information as they may need in order to adequately help themselves.

We are absolutely committed to the notion that the people in the community need to know what acute hazards are present there as well as the medical authorities need to know in order to best treat them. Further, the fire departments, police departments, and other emergency authorities should have an awareness of those risks.

It is our view that by opening this interrelationship between the authorities, the community, industry, State and local government, and the Federal Government doing this scientific role, we would be in a very good position to keep that dialog presumably going on for some time in the future as it extends beyond this initial focus of acute hazards and perhaps into other areas of concern as well.

Senator **Bumpers**. Why do these bills only go to 6,000 kilograms of hazardous substances? Why is that a good threshold? I don't know. I am a real layman on this subject.

Dr. **Moore**. Senator, as far as that acute hazards list we are talking about putting together, we don't think it should have an a priori finite number set up and that indeed whatever number is appropriate should be peculiar to that chemical and a particular use of that chemical. We don't think a number will serve as you look at the variety of chemicals and their characteristics.

Senator **Bumpers**. So, you don't particularly like that provision anyway.

Dr. **Moore**. We would much rather do it on a chemical by chemical basis for those acute hazard chemicals. I recall that Senator D'Amato's bill points out that the Agency can change from a number that had been proposed. Again, it allows that flexibility.

Senator **Bumpers**. Of course, this committee is normally very protective of small business, and in an area like this, I am not sure we can be so cavalier about something as dangerous as this is.

One other question: None of these bills deal with explosives, do they?

Dr. **Moore**. I might suggest that ignitability or explosibility may well also be covered.

Senator **Bumpers**. I am just thinking about a case. I believe it was down in Tennessee where some sort of illicit fireworks manufacturer down there was employing several people and several people were killed. Do you remember that? I forget how long ago it was. Nobody in the community even knew they were there. It was an illegal operation, but it could very well have been a legal operation and the people still wouldn't have known that there was that kind of a risk to the community at large. That is the only reason I was asking about that. But this bill does not deal with explosives. Is that correct?

Mr. **Makris**. Yes, it does not.

Senator **Bumpers**. OK.

Thank you, Mr. Chairman.

Senator **D'Amato**. Dr. Moore, let me thank you for your candor and your testimony. If there are any other points that you would like to make, we certainly would like to hear them. If not, we certainly give you the committee's thanks for your participation today.

Dr. **Moore**. Thank you, Senator. I have no other comments to make other than to make the offer that the Agency certainly is willing to work with you and any other interested people in trying to come up with what might be the appropriate language or solution to the well-intentioned legislative efforts in this area.

Senator **Bumpers**. Mr. Chairman, before he leaves, if I may, you agree, do you not—is EPA in agreement that there should be some preempting national legislation on this?

Dr. **Moore**. Our feeling is that, to the contrary, States should have an ability to be much more restrictive than the Federal Government.

Senator **Bumpers**. I understand they can be more restrictive, but do you think there ought to be a bottom line?

Dr. **Moore**. As far as emergency response sort of thing, we think that should be a local initiative. We think we should clearly point out to them what chemicals should be of concern and how they should approach deciding what should be done but that, indeed, it is not a Federal preemptive role to force them to do something in this area.

Senator **Bumpers**. Well, I agree with you that States ought to be permitted to adopt a more stringent right to know requirement as they deem appropriate for their States, but obviously we are getting a hodgepodge of different laws now at the State level. While I am reluctant for us to preempt that, and I wouldn't suggest that we preempt it, but I do think that there ought to be a minimum standard at the Federal level, that no State should be able to go below. If they want to go above it, that is OK.

Senator **D'Amato**. I would like to ask you just one thing: If you would attempt to work with our staff and committee in coming up with what you might think would be reasonable notification provisions? I mean specifically those who should fall under the notification requirement. I notice that one of the differences is, we say the county, and we define it as a certain subdivision because in some States, we may not be talking about counties. We may be talking about parishes, that subdivision immediately beneath the State, and then cities of at least 25,000.

The question comes, what about villages? What about towns that have less than 25,000? What about every local emergency unit within those villages, towns, and counties, should every public library—because I can envision where one company might have to, within a particular jurisdiction, be called upon to notify dozens and dozens and dozens of individual agencies.

So, I would like your thoughts on that and what would be the manner in which to get the information to the appropriate authorities and yet not constitute an undue or unreasonable burden, particularly on the small business aspect of the community.

Dr. **Moore**. Senator, we would be glad to work with you on that.

Senator **Bumpers**. Dr. Moore, before you leave, I was just looking over Senator Lautenberg's testimony this morning, and he says information must be reported for substances covered by the existing Superfund statute. These are generally explosive, reactive, carcinogenic, or otherwise hazardous and are considered to pose an acute or chronic risk to the public health or environment.

Apparently, explosives are included.

Dr. **Moore**. Some degree of volatility or ability to explode or to vent through a safety valve or something like that certainly are covered, but we would not list, for example, on our acute hazards list that we are building something that would make it strictly because it was highly volatile.

Senator **Bumpers**. Like an ammunition manufacturer who stored a lot of powder and that sort of thing?

Dr. **Moore**. I wouldn't, a priori, put them on.

Senator **Bumpers**. Are you talking about compounds which possibly could catalytically create an explosion or something? Is that what we are talking about?

Mr. **Makris**. We will check through the RQ lists specifically and report back to you on that.

Senator **Bumpers**. Would you do that, please?

Mr. **Makris**. Sure. They all have chemical names, and we will see if any of them are explosives purely.

Senator **Bumpers**. Thank you, Mr. Chairman.

Senator **D'Amato**. Thank you very much.

[Subsequent information was received and follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 2 1985

OFFICE OF
PESTICIDES AND TOXIC SUBSTANCES

Honorable Lowell Weicker, Jr.
Chairman
Committee on Small Business
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find the Environmental Protection Agency's responses to questions, submitted by Senator Bumpers, arising out of the June 18, 1985 hearing on proposed legislation regarding community right-to-know.

If I can be of any further assistance, please feel free to contact my office.

Sincerely,

John A. Moore
Assistant Administrator
for Pesticides
and Toxic Substances

Enclosure

QUESTIONS AND ANSWERS

QUESTION: How would you characterize these bills? Do you see them as different solutions to the same problem or as different in their intent?

ANSWER: We believe these two bills are significantly different in their intent, coverage, and burden imposed.

The Administration believes that both ideas, community right-to-know and a national hazardous chemical inventory, have some merit and address legitimate public concerns. However, we do not think that the specific proposals in S.606 and S.51 have been adequately evaluated for their practical implications -- what we would actually gain and lose in practice -- and we would prefer that consideration of specific legislation wait until the implications are more thoroughly evaluated. I will, however, discuss some of the conceptual and practical problems in S.606 and S.51 that we have already identified.

S.606 requires that any facility that generates, treats or stores a covered chemical in quantities greater than 100kg/month must notify local officials of the name of the hazardous substance, the production volume, and emergency procedures. Emergency response procedures are not specifically defined in the act, so it is unclear what level of detail is required. The bill covers approximately 700 chemicals.

Based on the above requirements, it appears that the bill was developed to support a limited Community Right-to-Know program, one aimed at emergency preparedness efforts, while imposing a minimal burden on federal and state or local governments.

The major question that arises is whether the presumed intention of the bill -- emergency preparedness and response and community awareness -- is focused properly. It is unclear that emergency response procedures are needed for all chemicals and all facilities covered by the bill. It may be preferable to cover a more focused list of chemicals and facilities.

S.51 is even broader in scope. This bill requires that significant amounts of information be developed for the approximately 700 chemicals on the CERCLA RQ list. The information requested includes:

- Quantity produced or consumed;
- Maximum inventory of substance;
- Method of storage;

- Frequency and method of transfer;
- Stack/pt source emissions;
- Estimated fugitive emissions;
- Discharge into surface water;
- Discharge into groundwater;
- Treatment methods;
- Discharge into POTWs;
- Quantity and method of disposal;
- Onsite storage of waste containing the substance;
- Transporter of waste and location of waste facility;
- MSDS.

All facilities that store greater than 6000 kg of a covered chemical must comply with the requirements of the bill. The requested information must be reported to both the federal government and to state and local governments.

Given the information that is required to be developed, and those to whom the information must be reported, the bill appears to have at least a twofold purpose: The first is some form of right-to-know, which is served by providing information to local authorities; and the second is to provide a mechanism for EPA and state and local governments to establish an inventory of all hazardous substances and their release histories within their jurisdiction. The bill implies that EPA and state and local officials will be able to process, store, and analyze this inventory and develop strategies to (1) reduce the risk of chronic exposure to hazardous substances, and (2) respond to dangerous accidental exposures when they occur.

As with S.606, the major question regarding S.51 is whether the information that is being developed addresses the potential problem. If Community Right-to-Know is the intent, it is unclear whether state or local governments need emissions data on all the chemicals covered. Further, chemicals not covered by this bill might properly fall under a "Right-to-Know" objective. In contrast, if an emissions inventory is the intent, then it is unclear that inventory data needs to be developed for the approximately 700 chemicals covered by the bill.

The Agency continues to maintain that any Right-to-Know or other initiative must be focused on its intended purpose. If Right-to-Know is the intended purpose, this can be accomplished by making information such as OSHA MSDS sheets more easily available to the public. If emergency preparedness and response is the objective, then local governments should target such efforts around those chemicals that are most likely to pose a threat in the event of an accidental release. The Agency is developing an "acute hazard" list with this purpose in mind. If an emissions inventory is the purpose, then a focused list of chemicals with particular characteristics is needed.

QUESTION: Based on your experience managing chemical risk information systems, what do you see as the use of information like that gathered by the Hazardous Substance Inventory?

ANSWER: The concept of establishing a mass balance inventory of hazardous substances has some merit. For certain chemicals, it may be useful to understand from a mass balance perspective where the chemical is going, as this may give an indication of releases of the chemical into the environment that would otherwise go undetected.

However, there are some limitations to developing mass balance data that need to be understood. First, inventory balancing can be highly inaccurate. For example, often on a storage tank, the difference in reading of a dipstick of a fraction of an inch can lead to differences of volume readings of several hundreds or even thousands of pounds. With such small fractions of such large volumes, the inaccuracy of the volume readings can vastly overshadow the actual releases, if any. It is even feasible to have gains in weight. Therefore, in many cases, the accuracy of the inventory will only generally reflect the amount that was really released.

Second, many processes in the chemical industry are run in continuous mode rather than batch mode. This means that raw materials are fed into the process and drawn off on a continuous basis. Since the process is in constant use, it would be necessary to shut down in order to get a reading on the initial and final inventory, or readings must be taken while running the process, making it more difficult for inventory balancing.

If an inventory reporting provision is to be mandated then a focused list of substances with particular characteristics is needed so that the data is manageable and can be effectively utilized. Even for this focused list of substances, however, the data is not likely to be very accurate. If additional reporting is considered necessary, it should be focused so as to eliminate duplicative reporting requirements. Regardless, industry should be encouraged to make information such as the Material Safety Data Sheets they prepare under OSHA's Hazard Communication Standard available to the general public and appropriate state and local emergency personnel at least to identify what hazardous substances are present in a community.

Senator D'AMATO. We will call our first panel: Mr. Eugene Humphrey, Mr. Mitchell Robin, and Mr. Edward Williams.

First of all, let me say that we will take your testimony as if read in its entirety, and we will ask you to summarize for the purposes of the committee.

STATEMENT OF EUGENE B. HUMPHREY, PRESIDENT, HUMPHREY CHEMICAL CO., NORTH HAVEN, CT

Mr. HUMPHREY. Thank you, Senator. I would like to thank you for allowing us to testify before you this morning.

My name is Eugene Humphrey, and I am president of the Humphrey Chemical Co., in North Haven, CT. I appear today on behalf of the Synthetic Organic Chemical Manufacturers Association which is a nonprofit trade association with approximately 100 members who manufacture organic chemicals. More than half of these companies, like myself, are considered small companies with annual chemical sales under $50 million.

I believe that my company is typical of many small chemical manufacturers. We are established as and remain a closely held family owned concern operating one plant in North Haven, CT. Our total annual sales are approximately $8 million each year. We produce about 50 organic intermediates and specialty chemicals in volumes ranging from 1 to 500 metric tons—that is a change on your sheet—per year. We generate an estimated 200 tons as waste designated under RCRA as hazardous and, in our case, flammable, which we ensure are properly transported and disposed of in accordance with RCRA requirements.

I appreciate the opportunity to appear before the Senate Small Business Committee to discuss SOCMA's concerns with the hazardous substances inventory program contained in the Senate Superfund reauthorization bill, S. 51. The objectives of the proposed program are to provide information to emergency officials about the potential dangers of hazardous substances and to create an inventory containing data regarding the quantities stored and environmental releases of hazardous substances.

Let me begin by emphasizing that our association and our members are committed to providing emergency authorities with information to respond to potential dangers of hazardous substances. We are also committed to working with communities to ensure that the risks of hazardous substances are properly understood. Many of our members are actively engaged in such initiatives on a purely voluntary basis at this time.

However, I believe that the program defined in S. 51 will not achieve its intended objectives, and I also believe that the program will cause needless hardships on small businesses like ours. Let me outline a few concerns I have with this provision.

First, I do not believe that it would serve any useful purpose for emergency officials to receive the environmental data required by the provision, such as fugitive emissions and wastewater discharges. S. 51 would require that information on stack emissions, fugitive emissions, and wastewater discharges to be distributed to state and local fire and police officials, medical officials, public libraries, and the President. Apart from the burden involved, I believe that this extensive information would serve no useful purpose to the emergency authorities who would receive it.

In order to comply with the proposed hazardous substances inventory, as a manufacturer, I would be required to estimate the environmental discharges, regardless of how small, for a large number of substances. This requirement is in needless overlap of existing environmental regulatory programs. As a particular case in point, the form required under the provision duplicates the manifest requirements established under RCRA, the cradle to grave system of controlling hazardous wastes.

Let me stress, however, that this program will not simply require the aggregation of readily available information submitted for the purposes of other environmental regulations. It will require many small businesses to go through an additional costly and time consuming process of collecting and analyzing information. The benefits of doing so will not significantly improve the protection of human health or the environment.

Let me reiterate that SOCMA's small business members support providing increased information to the communities in which hazardous substances are located. I believe, however, that the provision in S. 51 is not a feasible answer to the need at hand.

I believe that the objectives of S. 606, introduced by Senator D'Amato, comprise a more workable approach to providing better information on hazardous substances.

S. 606 requires that covered owners or operators of any facility involved in the generation, treatment, or storage of hazardous substances to submit a straightforward annual notification containing information about these chemicals. The information includes the description and amount of a hazardous substance present at a plant as well as the necessary procedures which should be taken in the event of an emergency. Such information would be supplied to the appropriate local officials of each city or county within 10 miles of the facility.

S. 606 does not require that annual and monthly environmental emissions and discharge information be reported. Small businesses would not be burdened by having to collect and report information which is not usable. While we would like to make certain suggestions to improve S. 606, we believe it is a more workable approach to answer a community's right to know. It will provide information necessary to plan for and respond to potential dangers involving hazardous substances.

Let me reiterate that SOCMA's small business members support providing increased information to communities in which hazardous substances are located. SOCMA urges, and I certainly urge, that this committee carefully consider the adverse impacts of inventory requirements in S. 51 and the effect that they would have on small businesses.

I would be pleased to entertain questions.

Senator D'AMATO. Thank you very much, Mr. Humphrey.

Mr. Robin.

STATEMENT OF B. MITCHEL ROBIN, CHAIRMAN OF GOVERNMENT AFFAIRS, INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION, WASHINGTON, DC

Mr. ROBIN. Thank you, Senator D'Amato.

My name is B. Mitchel Robin. I am vice president-technical for E.F. Houghton & Co., an independent lubricant manufacture headquartered in Valley Forge, PA, with manufacturing plants in six States. I appear today on behalf of the Independent Lubricant Manufacturers Association which I serve as a member of the board of directors and chairman of the government affairs committee.

We appreciate this opportunity to present our views on community right to know legislation pending before Congress. In particular, we would like to discuss our concerns with the Hazardous Substance Inventory Program contained in S. 51, the Superfund reauthorization bill awaiting action by the full Senate.

ILMA supports the need for emergency authorities to be informed of the potential dangers posed by releases of hazardous substances in their communities. However, ILMA is concerned that provisions in the pending legislation will go beyond what is necessary to protect human health and the environment and have the potential to impose significant paperwork and economic burdens on small businesses like ours.

ILMA is a national trade association of 140 small businesses ranging in size from fewer than 10 to more than 200 employees which blend, compound, and sell more than 20 percent of the U.S. lubricant needs. ILMA member companies are neither owned nor controlled by the companies that explore for, own, or refine crude oil used to produce the lubricant base stocks.

In the wake of the tragedy in Bhopal, India and several release incidents in northern New Jersey which have been investigated by the Senate Environment and Public Works Committee, legislative proposals have been introduced in Congress concerning a community's right to know. As you are aware, the Senate environment panel has reported as part of the Superfund reauthorization bill a community right-to-know amendment authored by Senator Frank Lautenberg of New Jersey.

ILMA members recognize the need for fire, police, medical, and other emergency authorities to be appropriately informed of the potential dangers posed by the release of hazardous substances so that an informed and effective response can be made. However, the Lautenberg proposal in S. 51 goes beyond what is necessary and will impose numerous hardships on small businesses.

Small businesses will have to comply with extensive and redundant information collection requirements under the inventory procedure of S. 51. E.F. Houghton Co.'s experience with the California right-to-know law illustrates this point. My company has a plant in southern California, and it took us 4 man-months to compile the information required to be submitted to the State under their right-to-know law.

After reviewing S. 51, we estimate it will take approximately 9 man-months to meet the law's mandates for each plant. Considering that E.F. Houghton has six plants in the United States, it would consume 4½ man-years to meet S. 51's proposed paperwork burden. Because many ILMA members have as few as 10 employees, S. 51 could divert as much as 10 percent of member companies' productive resources to community right to know compliance alone. The weight of this paperwork burden is increased substantially when you consider the Federal requirement will be the floor for States and local right to know notifications.

Given the numerous agencies at all levels of government which will have to be notified, the Lautenberg proposal goes well beyond informing relevant emergency authorities about potential dangers of hazardous substances in the community. In fact, a principal objective of the community right-to-know provision in S. 51 is the creation of an inventory or mass balance for all hazardous substances that move in commerce or are released into the environment. We question whether such a provision will achieve its stated objective and whether, in fact, a mass balance inventory has any place in legislation pertaining to hazardous waste cleanup at abandoned or inactive sites.

In reviewing the proposed form mandated by S. 51, it appears that much of the information required would not be usable by, and, in all probability, would be very confusing to emergency authorities. For example, the form requires data on stack, point, and fugitive emissions which would have to be distributed to emergency authorities. ILMA members do not have stacks in their plants. In addition, every time a window or door to a plant is opened, fugitive emissions could occur. The costs to small businesses of measuring such emissions would be staggering. I believe that E.F. Houghton & Co. is a highly sophisticated independent lubricant manufacturer. However, we do not know whether we could measure such emissions, much less know how to measure them in order to comply with the proposed legislation.

In addition to the burden of compliance such a requirement would impose on ILMA members, there does not appear to be any useful purpose for which emergency authorities could use such information. In fact, we wonder what has happened to the volumes of information that E.F. Houghton has already provided to numerous government entities. Our company probably has filled innumerable filing cabinets somewhere. In my company, we are talking about man-years, not man-hours, of effort.

ILMA is concerned that the large body of information needed to achieve the mass balance inventory of hazardous substances overlaps and, in fact, exceeds existing regulatory programs for hazardous wastes and chemicals. For example, the requirements for listing of the quantity and methods of disposal of any waste containing hazardous substances, the method of onsite storage of such wastes, the location or locations of the final disposal site of such wastes, and the identity of the transporter of such wastes appear to go far beyond the manifest requirements under RCRA, particularly those which become effective on August 5, 1985, for small quantity generators.

Thus, the hazardous substance inventory envisioned in Senator Lautenberg's proposal will require time consuming and expensive recalculation of information already collected in different form to comply with other environmental laws. We believe it will impose additional costly monitoring and estimations which will not significantly improve the protection of the public health and the environment and could lead to inadvertent violations.

Of particular concern to small businesses is the provision that permits States to require equivalent or different information. Given local pressures for individual forms, it is highly unlikely that the inventory intended by the Federal legislation would have a consistent basis for analysis. Moreover, different local requirements for forms would impose a significant burden on all small business involved in interstate commerce. Independent Lubricant Manufacturers strongly prefer to produce and distribute one form acceptable to numerous jurisdictions rather than having to generate a separate form for each governmental unit.

ILMA has not adopted a formal position on S. 606, introduced by Senator D'Amato of New York. However, unlike the provisions in S. 51, Senator D'Amato's proposal comes closer to addressing small businesses' concerns with community right to know legislation. S. 606 provides a more thoughtful approach to structuring a community right to know program to provide information to emergency authorities, but needs some modification.

For example, the limitation of notification to a 10-mile radius is a step in the right direction. However, there are seven jurisdictions, two cities, and five counties within a 10-mile radius of my company's Fogelsville, PA, plant. In this area, however, it is not the counties but rather the smaller jurisdictions, the townships, which provide emergency services. We do not know how many townships are located within this 10-mile radius. Thus, there would be a tremendous burden on my company if we would have to provide information to an unknown number of jurisdictions on an unknown number of separate forms.

ILMA and other small business groups look forward to working with members of the Small Business Committee in developing effective and workable community right to know legislation, if Congress determines such a measure is necessary.

In summary, ILMA has serious concerns regarding the community right to know provisions in S. 51 because they will not achieve the stated objectives and because they will impose significant burdens, economic and otherwise, on small businesses. While ILMA supports providing emergency authorities with the requisite information to respond to potential dangers of hazardous substances, the mass balance inventory is not a workable way to satisfy a community's right to know requirements.

[The prepared statement of Mr. Robin follows:]

ILMA Independent Lubricant Manufacturers Association
1055 Thomas Jefferson Street, N.W. • Suite 302 • Washington, D.C. 20007 • (202) 337-3470

BEFORE THE COMMITTEE ON SMALL BUSINESS

UNITED STATES SENATE

TESTIMONY OF B. MITCHEL ROBIN,
VICE PRESIDENT - TECHNICAL,
E. F. HOUGHTON & COMPANY

ON BEHALF OF

THE INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION

ON

COMMUNITY "RIGHT-TO-KNOW" LEGISLATION

June 18, 1985

President
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General Counsel
WILLIAM W. SCOTT
Collier, Shannon, Rill & Scott

Thank you. My name is B. Mitchel Robin. I am Vice President - Technical for E. F. Houghton and Company, an independent lubricant manufacturer headquartered in Valley Forge, Pennsylvania, with manufacturing facilities in six states. Our company specializes in the production of lubricating products and processing fluids for metalworking and industrial applications. I appear today on behalf of the Independent Lubricant Manufacturers Association (ILMA), which I serve as a member of the Board of Directors and as Chairman of the Government Affairs Committee.

ILMA appreciates this opportunity to present its views on community "right-to-know" legislation pending in Congress. In particular, ILMA would like to discuss its concerns with the hazardous substance inventory program contained in S. 51, the Superfund reauthorization bill awaiting action by the full Senate. ILMA supports the need for emergency authorities to be informed of potential dangers posed by releases of hazardous substances in their communities. However, ILMA is concerned that provisions in the pending legislation go well beyond what is necessary to protect health and the environment and have the potential to impose significant paperwork and economic burdens on small businesses, including independent lubricant manufacturers.

Introduction of ILMA

ILMA is a national trade association of approximately 140 small businesses, ranging in size from fewer than 10 to more than 200 employees, which blend, compound and sell more than 20 percent of the United States' lubricant needs. ILMA member companies are neither owned nor controlled by the companies that explore for, own or refine crude oil used to produce lubricant base stocks.

Purchasing mineral oil and synthetic lubricant base stocks and a wide range of additives, independent lubricant manufacturers compound and blend the base stocks and additives to produce high quality automotive and industrial oils and greases. Additives provide required performance characteristics in the finished lubricant product.

Independent lubricant manufacturers, because of their size and proximity to their customers, are well equipped to provide highly-specialized, often proprietary, lubricant formulations to meet special customer requirements. As small businesses, ILMA members base their success on traditions of service and innovation in supplying lubricants to other small and medium-size businesses, as well as to industrial and commercial "giants."

The Pending "Lautenberg Proposal" Will Not Achieve Its Intended Purpose

In the wake of the tragedy in Bhopal, India and several release incidents in Northern New Jersey, which have been investigated by the Senate Environment and Public Works Committee, legislative proposals (Section 106, S. 51; S. 606; H.R. 2022; and H.R. 2560) have been introduced in Congress concerning a community's "right-to-know." As you are aware, the Senate Environment panel has reported as part of the Superfund rauthorization bill (S. 51) a community right-to-know amendment (section 106) authored by Senator Frank Lautenberg of New Jersey.

Senator Lautenberg's proposal would create a hazardous substance inventory program with the objectives of: (1) providing information to emergency authorities about the potential dangers of hazardous substances; and of (2) creating an inventory containing data about the types, quantities, storage, and releases into the environment of hazardous substances.

ILMA members recognize the need for fire, police, medical, and other emergency authorities to be appropriately informed of the potential dangers posed by the release of hazardous substances, so that informed and effective responses can be made. However, the Lautenberg proposal in S. 51 goes beyond what is necessary and will impose numerous hardships on small businesses, including ILMA members.

Manufacturers, including independent lubricant manufacturers, would have to comply with extensive and redundant information collection requirements under the inventory provision of S. 51. E. F. Houghton's experience with California's right-to-know law illustrates this point. My company has a plant in Southern California, and it took us four months to compile the information required to be submitted on the state's form. After reviewing S. 51, we estimate that it will take nine months to meet the law's mandates for each plant. Considering that E. F. Houghton has six plants in the United States, it would consume four and one half man-years to meet S. 51's proposed paperwork burden. Because many ILMA members have as few as ten employees, S. 51 could divert as much as ten percent of member companies' productive resources to community right-to-know compliance alone. The weight of this paperwork burden is increased substantially when you consider the Federal requirement to be the "floor" for state and local "right-to-know" notifications.

Given the numerous agencies at all levels of government which would have to be notified, the Lautenberg proposal goes well beyond informing relevant emergency authorities about the potential dangers of hazardous substances in the community. In fact, a principal objective of the community right-to-know provision in S. 51 is the creation of an inventory -- or "mass balance" -- for all hazardous substances that move in commerce or are released into the environment. We question whether such a provision will achieve its stated objective and whether, in fact, a mass balance inventory has any place in legislation pertaining to hazardous waste cleanup at abandoned or inactive waste sites.

Senator Lautenberg's proposal would require the use of a form similar to one which has been prepared for use in the state of New Jersey. ILMA is not certain of the effectiveness of the New Jersey form. Several of its members doing business in the state have reported that a January 1985 Federal district court decision overturning the state's worker and community right-to-know law has held that manufacturers in the state do not have to comply with the law's community right-to-know provisions. These ILMA members, as well as other New Jersey manufacturers, thus, have had no "hands on" experience with the state's form.

Moreover, non-manufacturing employers have been required to use a short form which asks no questions about environmental releases and discharges. Further, many of the forms submitted to New Jersey's Department of Environmental Protection have needed technical corrections. Thus, it is questionable whether Congress should enact such a comprehensive hazardous substance inventory program based on one state's activities which have not been fully implemented.

In reviewing the proposed form mandated by S. 51, it appears that much of the information required would not be usable by, and, in all probability, would be very confusing to emergency authorities. For example, the form requires data on stack, point and fugitive emissions, which would have to be distributed to emergency authorities. Independent lubricant manufacturers' manufacturing plants do not have stacks. Moreover, every time a window or door to a plant is opened, fugitive emissions could occur. The costs of measuring such emissions to small businesses, including independent lubricant manufacturers, would be staggering. E. F. Houghton & Company is a highly sophisticated independent lubricant manufacturer. However, we do not know whether we could measure such emissions, much less know how to measure them, in order to comply with the proposed legislation.

In addition to the burden of compliance such a requirement would impose on ILMA members, there does not appear to be any useful purpose for which emergency authorities could apply such information. We wonder what has happened to the volumes of information E. F. Houghton has already provided to numerous governmental entities. I believe that we have filled innumerable filing cabinets ... somewhere. In my company, we're talking about man years, not man hours, of effort. Needless to say, these are costs that every independent lubricant manufacturer must pass along to the consumer of his product, whether he makes 10W-40 motor oil or specialized synthetic lubricants for America's aerospace program.

ILMA is concerned that the large body of information needed to achieve the "mass balance" inventory of hazardous substances overlaps and exceeds existing regulatory programs for hazardous wastes and chemicals. For example, the requirements for the listing of the quantity and methods of disposal of any waste containing the hazardous substances, the method of on-site storage of such wastes, the location or locations of the final disposal site of such wastes, and the identity of the transporter of such wastes appear to go beyond the manifesting requirements under RCRA, particularly those which become effective on August 5, 1985 for "small-quantity generators."

Thus, the hazardous substance inventory envisioned in Senator Lautenberg's proposal will require time-consuming and expensive recalculation of information already collected in different form to comply with other environmental laws. ILMA believes it will impose additional costly monitoring and estimations which will not significantly improve the protection of public health and the environment and could lead to inadvertent violations.

Of particular concern to small businesses, including independent lubricant manufacturers, is the provision that permits states to require "equivalent or different" information. Given local pressures for individual forms, it is highly unlikely that the inventory intended by the Federal legislation would have a consistent basis for analysis. Moreover, differing local requirements for forms would impose a significant burden on small businesses involved in interstate commerce. Independent lubricant manufacturers strongly prefer to produce and distribute one form acceptable to numerous jurisdictions, rather than having to generate a separate form for each governmental unit.

Senator D'Amato's Proposal Is The Start of a More Workable Approach

ILMA has not adopted a formal position on S. 606, introduced by Senator Alfonse M. D'Amato of New York. However, unlike the provisions in S. 51, Senator D'Amato's proposal comes closer to addressing small businesses' concerns with community right-to-know legislation. S. 606 provides a more thoughtful approach to structuring a community right-to-know program to provide information to emergency authorities, but it needs some modification.

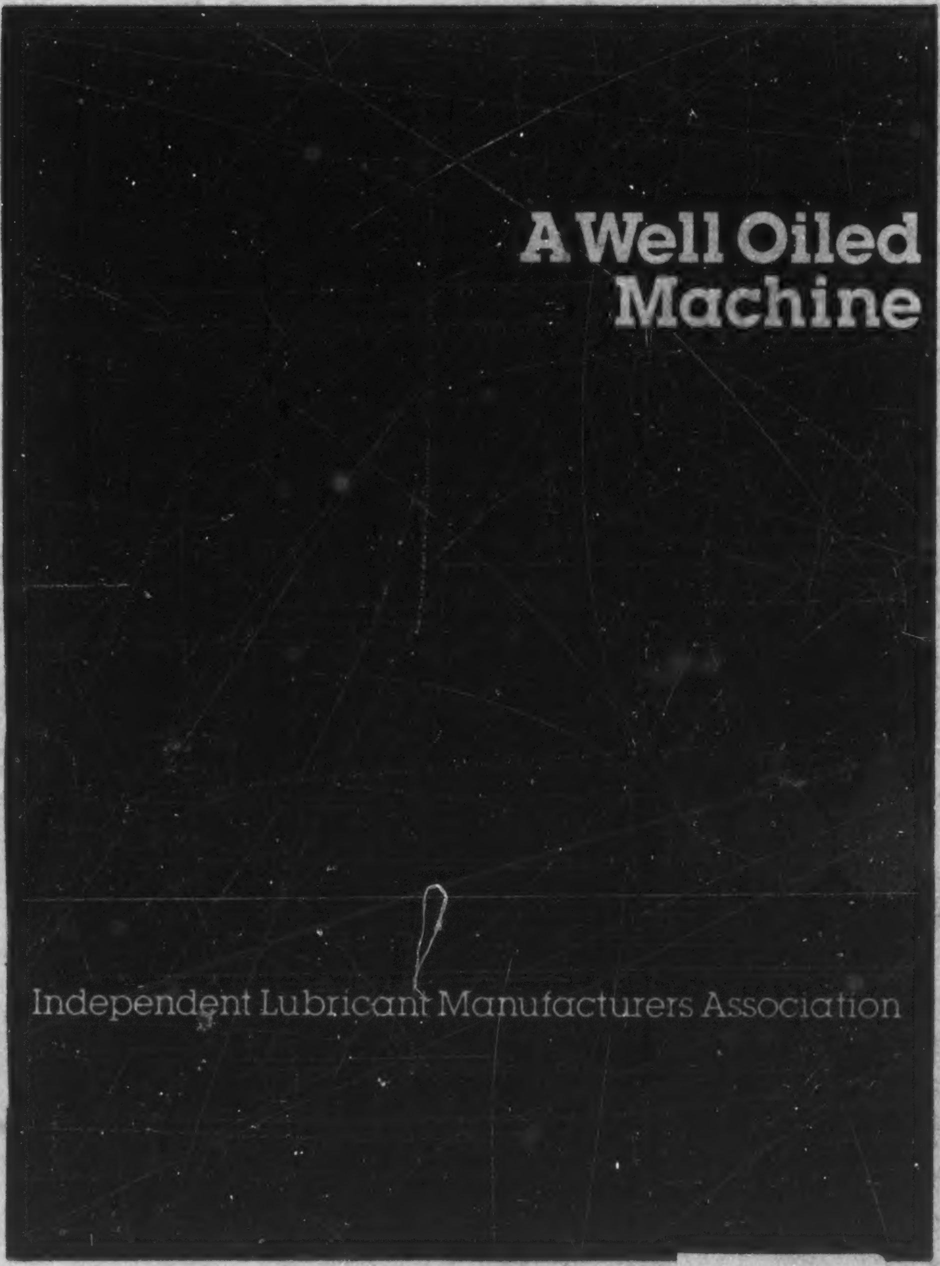
For example, the limitation of notification to a ten mile radius is a step in the right direction. However, there are seven jurisdictions --two cities and five counties -- within a ten mile radius of my company's Fogelsville, Pennsylvania, plant. In this area, it is not the and counties but rather the smaller jurisdictions, the townships, which provide emergency services. We do not know how many townships are located in that ten mile radius. Thus, there would be a tremendous burden on my company if we have to provide information to an unknown number of jurisdictions on an unknown number of separate forms.

ILMA and other small business groups look forward to working with members of the Small Business Committee in developing effective and workable community right-to-know legislation, if Congress determines such a measure is necessary.

Conclusion

In summary, ILMA has serious concerns regarding the community right-to-know provisions in S. 51 because they will not achieve the stated objectives and because they will impose significant burdens -- economic and otherwise -- on small businesses, including independent lubricant manufacturers. While ILMA supports providing emergency authorities with the requisite information to respond to potential dangers of hazardous substances, the mass balance inventory is not a workable way to satisfy a community's right-to-know.

I will be happy to respond to any questions my testimony may have raised.



A Well Oiled Machine

Independent Lubricant Manufacturers Association

Lubricants. The Lifeblood of the Machines that Move the Economy.

From the beginning of the industrial revolution over two centuries ago, wherever modern technology has spread, lubricants have been a vital key to progress.

The moment two pieces of metal first touched in a primitive steam engine, the need for modern lubricants was born. Today lubricants are vitally important to the productivity and efficiency of our economy. Used to minimize friction, prevent wear, control temperature, transmit power and reduce maintenance costs, lubricants are now as diverse and widespread as technology itself...the lifeblood of the machinery that keeps our society moving.

It is difficult, if not impossible, to imagine a single industry that would not grind to a halt if the supply of today's lubricants disappeared. Without lubricants, transportation would be immobilized. Heating and cooling systems would burn up. Manufacturing of virtually every description would simply stop.

Providing a steady supply of high quality lubricants to the machinery that powers the economy is the challenge that independent lubricant manufacturers meet daily.

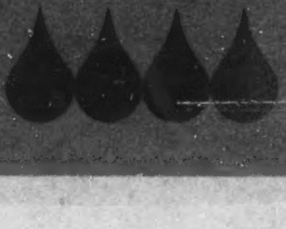
In the public and private sectors, America depends on the two billion gallon stream of lubricants that oils the economy each year.

Each year, Americans purchase nearly 1.3 billion gallons of automotive lubricants, more than 14 million quarts of oil per day. These automotive lubricants... crankcase oils, transmission and hydraulic fluids, gear oils and gasoline two-stroke oils... make up 60% of the total volume of lubricants sold in the United States.

It takes more than 800 million gallons of general industrial oils, industrial engine oils, metalworking fluids and process oils annually to keep the wheels of industry turning. In addition, 55 million gallons of greases and 300 million gallons of aromatic oil and wax by-products flow into the machinery of the economy every year.

In the U.S., the annual demand for lubricants exceeds two billion gallons. And independent lubricant manufacturers are a principal source for these essential lubricants.

So in many ways, independent lubricant manufacturers are responsible for the advanced industries we have built our society on today. In many more ways, independent lubricant manufacturers are leading us all into the future technologies that will shape our world tomorrow.



Independent Lubricant Manufacturers. Helping the Machines Run Smoothly.

Manufacturing and selling over 400 million gallons of lubricating oil each year, independent lubricant manufacturers play a vital role in the economy.

Independent lubricant manufacturers are small businesses ranging in size from fewer than ten to more than two hundred employees. They blend, compound, and sell more than 20% of the United States' lubricant needs. And in the dynamic U.S. marketplace, their role is growing.

Privately operated, they are neither owned nor controlled by the companies that explore for, own or refine crude oil used to produce lubricant base stocks.

Purchasing mineral oil and synthetic lubricant base stocks and a wide range of additives, independent lubricant manufacturers compound and blend base stocks and additives to produce high quality automotive and industrial oils and greases. The additives are necessary to provide required performance characteristics in the finished lubricant.

The proper selection of base stocks and additives depends on the purpose the lubricant will serve. And independent lubricant manufacturers, because of their size and proximity to their customers, are well equipped to provide highly specialized, often proprietary, lubricant formulations, to fulfill special customer requirements.

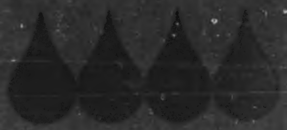
Independent lubricant manufacturers are diverse, competitive and committed to quality service.

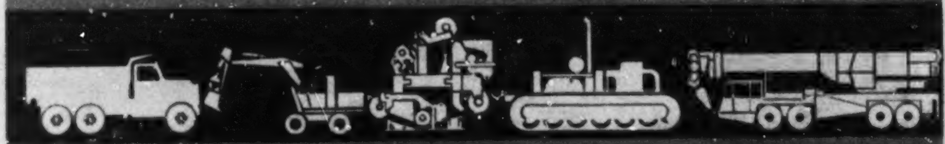
As small businesses, independent lubricant manufacturers base their success on traditions of service and innovation in supplying lubricants to other small and medium-sized businesses as well as to industrial and commercial giants.

Independent lubricant manufacturers are as diverse as the markets they serve. A large proportion manufacture automotive lubricants for original equipment manufacturers and for the retail market, under their own labels or through contract packaging arrangements. Some specialize in solid lubricants, synthetic lubricants, water-based lubricants, or greases. Some focus almost exclusively on the lubricant needs of a single industry, such as coal mining, textiles, food processing and packaging, or electronics. Many provide oils for general industrial applications.

Most are engaged in interstate commerce and a majority export products. And many provide lubricant-related goods and services including quality control laboratory analyses and the manufacture of related specialty products.

Above all, independent lubricant manufacturers are concerned with providing service to their customers. And as manufacturers they are concerned about adequate sources of supply, productivity, efficiency and safety in their plants, as well as fair competition in the marketplace. Competing with each other and with petroleum refiners, independent lubricant manufacturers have a long tradition of success providing lubricant products that meet and exceed customer specifications.





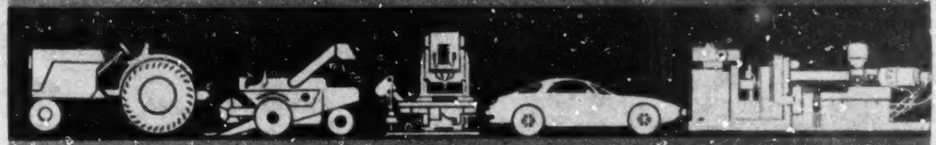
ILMA. Keeping the Industry in Gear.

Running smoothly for close to four decades, ILMA is the independent lubricant manufacturing industry's forum for communication and action.

The Independent Lubricant Manufacturers Association (ILMA), established in 1948, is the nonprofit trade association which speaks for its industry before Congress, government agencies, industry groups and other publics. Independent lubricant manufacturers are Regular members of ILMA. Companies that support the association's objectives may join ILMA as Associate members.

Representing small businesses, ILMA seeks reasonable solutions to industry concerns by working with legislators and regulators, informing them of the industry's positions as well as the impact of proposed government actions on its member companies. Issues include environmental protection, petroleum supply and demand, health and safety, product liability, and hazard communication requirements, plus storage and transportation of petroleum products and other materials.

ILMA's Washington, D.C.-based staff monitors relevant activities at the federal level, and advises ILMA members of current and emerging issues and actions. Frequent government affairs and legal bulletins as well as ILMA's monthly publication Compoundings keep members abreast of developments outside and within the industry. The annual ILMA Directory is the "who's who" of the industry.



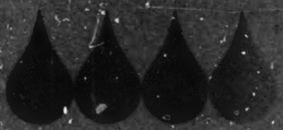
Active committees and two yearly meetings provide the structure to meet ILMA's short and long range goals.

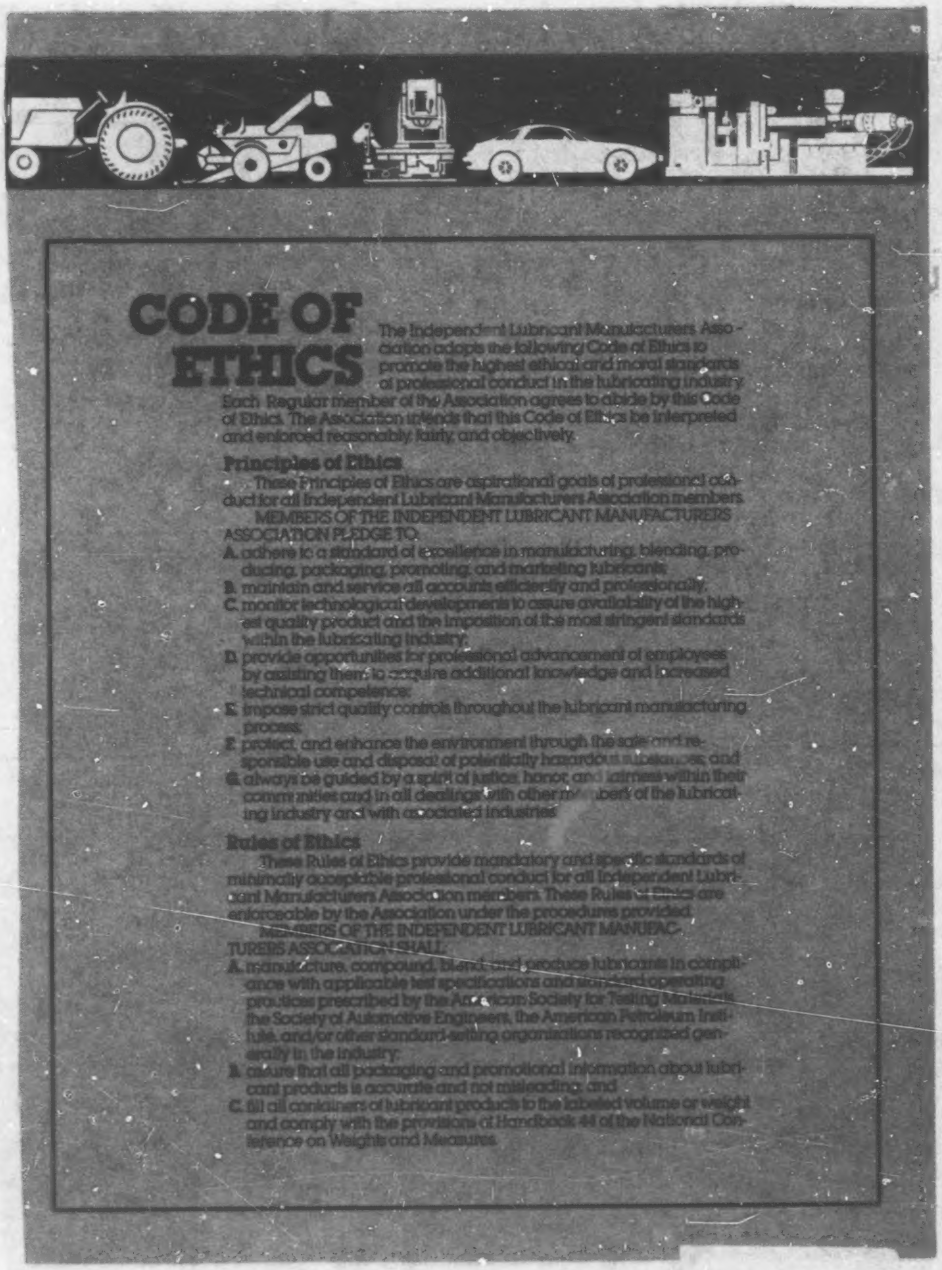
Industry Committees, which are open to both Regular and Associate members, include the Automotive Lubricants, Industrial Lubricants, Metalworking Lubricants and Packaging/Manufacturing Committees. These committees meet twice a year to discuss new technologies and challenges in their sectors of the industry. Committee sessions offer presentations by experts from industry, government and the academic world; joint action on technical and governmental matters; and interchange of information on industry topics.

ILMA's Association Committees of Regular members include Ethics, Government Affairs, Long Range Planning, Membership, Program Planning, Public Relations and Statistics. They recommend policies and actions to the Board of Directors and carry out programs to benefit the industry.

The Code of Ethics, adopted in 1984, is one of the petroleum industry's first enforceable ethics statements, identifying ILMA members as credible, quality lubricant manufacturers who follow a high code of business ethics.

The Annual Meeting, held each fall, and the spring Midyear Meeting offer both Regular and Associate members the opportunity to meet face-to-face to conduct ILMA's and the industry's business.





CODE OF ETHICS

The Independent Lubricant Manufacturers Association adopts the following Code of Ethics to promote the highest ethical and moral standards of professional conduct in the lubricating industry. Each Regular member of the Association agrees to abide by this Code of Ethics. The Association intends that this Code of Ethics be interpreted and enforced reasonably, fairly, and objectively.

Principles of Ethics

These Principles of Ethics are aspirational goals of professional conduct for all Independent Lubricant Manufacturers Association members.

MEMBERS OF THE INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION PLEDGE TO:

A. adhere to a standard of excellence in manufacturing, blending, producing, packaging, promoting, and marketing lubricants;
B. maintain and service all accounts efficiently and professionally;
C. monitor technological developments to assure availability of the highest quality product and the imposition of the most stringent standards within the lubricating industry;
D. provide opportunities for professional advancement of employees by assisting them to acquire additional knowledge and increased technical competence;
E. impose strict quality controls throughout the lubricant manufacturing process;
F. protect, and enhance the environment through the safe and responsible use and disposal of potentially hazardous substances; and
G. always be guided by a spirit of justice, honor, and fairness within their communities and in all dealings with other members of the lubricating industry and with associated industries.

Rules of Ethics

These Rules of Ethics provide mandatory and specific standards of minimally acceptable professional conduct for all Independent Lubricant Manufacturers Association members. These Rules of Ethics are enforceable by the Association under the procedures provided.

MEMBERS OF THE INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION SHALL:

A. manufacture, compound, blend, and produce lubricants in compliance with applicable test specifications and standard operating practices prescribed by the American Society for Testing Materials, the Society of Automotive Engineers, the American Petroleum Institute, and/or other standard-setting organizations recognized generally in the industry;
B. assure that all packaging and promotional information about lubricant products is accurate and not misleading; and
C. fill all containers of lubricant products to the labeled volume or weight and comply with the provisions of Handbook 44 of the National Conference on Weights and Measures.

Senator D'AMATO. Thank you, Mr. Robin.

Senator Sasser.

STATEMENT OF HON. JAMES R. SASSER, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator SASSER. Thank you, Mr. Chairman.

First, Mr. Chairman, I want to commend you for holding these very important hearings this morning. I think we in the United States have become increasingly aware of the environmental forces which impact on our daily lives. There is a shared commitment to safeguard the quality of the lives of our children and future generations by dealing with the problems of the environment. Thus, these hearings are both timely and in the national interest, and I want to express to you my gratitude for holding these hearings.

Also, Mr. Chairman, it is my pleasure to introduce to the committee a very distinguished individual from our State, Mr. Edward F. Williams, a member of the Shelby County Tennessee Board of Commissioners and the vice chairman of the Memphis-Shelby County Hazardous Materials Advisory Committee. He is also vice chairman of the Environment and Energy Steering Committee of the National Association of Counties and is an experienced legislator himself, Mr. Chairman, having served four terms in the Tennessee House of Representatives. So, he knows something about the complex interests that many times we are called upon to balance off.

As you know, Mr. Chairman, I am a conferee on the House-Senate Budget Conference Committee, so that explains my inability to be here for all of these hearings this morning.

I would like to insert some questions in the record along with an opening statement, if I may do so.[1]

Senator D'AMATO. So ordered.

[The prepared statement of Senator Sasser follows:]

STATEMENT OF HON. JAMES R. SASSER, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Mr. Chairman, thank you for holding this important hearing this morning.

Americans have become increasingly aware of the environmental forces which impact upon their daily lives. There is a shared commitment to safeguard the quality of our lives, the lives of our children, and future generations.

Public awareness has meant greater public involvement. Americans want to know, and, indeed, have a right to know what's going on around them. In that sense, we are all environmental stewards.

The community's right to know requires cooperation at every level. Industries, localities, States, and the Federal Government have a mutual stake in protecting the public's health and well-being.

This hearing is both necessary and vital. Bhopal is the unfortunate exception; it need never be the rule.

Mr. Chairman, thank you again for taking the time to conduct this hearing. I know that you have been very actively involved in this issue. I look forward to hearing the testimony.

Senator D'AMATO. Senator, we are deeply appreciative of your appearance here today. I understand your commitments, and we are certainly pleased to have your colleague in government from Tennessee, Commissioner Williams.

Commissioner.

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[1] See questions and answers beginning at p. 87.

STATEMENT OF EDWARD F. WILLIAMS, SHELBY COUNTY COMMISSIONER, MEMPHIS, TN

Mr. **Williams**. Thank you, Mr. Chairman, and thank you, Senator Sasser. I appreciate the introduction.

I might, just as a little further coverage, point out that while in the Tennessee House of Representatives, I was the primary sponsor or cosponsor of every piece of environmental legislation enacted between 1970 and 1978. There, I was also the primary sponsor of the Tennessee Occupational Safety and Health.

I think the only time that I have been with Senator Bumpers we once dedicated a bridge together. You may not recall that.

Senator **D'Amato**. Did anyone fall in when you dedicated the bridge?

Mr. **Williams**. Well, it would have been a long drop. This was a bridge over the Mississippi River.

However, Senator D'Amato, as it turns out, except for some decisions by my parents, I might still be a constituent of yours. I was born in the Bay Ridge Hospital in Brooklyn, NY, and that has so little——

Senator **Bumpers**. You ain't helping yourself any with this committee. [Laughter.]

Mr. **Williams**. Well, I will tell you what, Senator, I was going to explain. That has so little political sex appeal in my district, that I don't reveal that when I am within earshot of people who can vote down there.

Senator **D'Amato**. I want you to know I am glad you are down in Tennessee, because you may have been sitting here and I don't know if I would even be sitting there. This witness has touched three Senators in a period of 30 seconds, Tennessee, Arkansas, and New York. [Laughter.]

Mr. **Williams**. I have been in politics for 22 years.

Senator **Bumpers**. Tennessee stole the Liberty Bowl game from us the very year after we paid for half of that bridge.

Mr. **Williams**. We were smart on our side. We got you to pay for half the bridge first, though. That was the important thing.

For the record, my home address is 148 Perkins Extended in Memphis, and I am appearing before you as an individual county commissioner as a result of a contact from one of my constituents late last week concerning the community right to know or hazardous substances inventory amendment which was added to the Superfund reauthorization bill earlier this year but, quite frankly, comes as a surprise to me and to all the local and State officials with whom I have had time to speak before appearing here this morning.

The amendment appears to have had very little local government input even though I understand it is generally based upon a New Jersey statute. We had all thought of right to know laws as an extension of employee health and safety programs under OSHA and the Department of Labor. We are concerned that establishment of a parallel program under EPA will lead to confusion, duplication, and costly paperwork without substantial benefits.

This paperwork potential appears to create a great deal of clerical costs for our local governments in two ways:

First, we would be receiving a potentially very large number of notifications from warehouses and wholesalers of consumer products which are not normally thought of as hazardous but would require notification because of the extremely broad list of solvents, cleaners, heavy metals, and other compounds which could easily become enmeshed in the program due to the 1-percent content provision that is in Senator Lautenberg's amendment. Further, although the committee report on the bill—page 11 of the committee report—says that, "finished consumer products such as might be found in a retail store" are exempt, that exemption does not actually appear in the statute, thus adding to the potential for literally thousands of additional notifiers which, I feel, is not the intent.

Reports are to be sent, in our case, to our county ambulance service, our sheriff, our county health and fire departments, our 3 hospitals, and our 12 libraries, not to mention similar agencies operated by the seven municipalities and eight private hospital systems in our community. Incidentally, the New Jersey statute is not that broad, but Senator Lautenberg's amendment is.

Second, our local governments will themselves become notifiers unless the triggering provisions for notification are much more clearly defined and narrowed. The consumer exemption is so vague that I could foresee a court ruling that bulk purchases are not "consumer products" or that central storage is not a consumer use or that the 6,000 kilogram storage is a cumulative total; 6,000 kilograms is only about 2,000 gallons. This could even mean that some firefighting chemicals could fall within the provisions of the act because of the 1-percent content rule.

Our penal farm uses phosphate, nitrate, or ammonia based fertilizers as well as herbicides and pesticides which are sometimes stored offsite and appear to make them a notifier. Our road department uses sufficient herbicides to become a notifier. In fact, because we operate three major hospital facilities, a cumulative total of hospital supplies in a single category could exceed the 6,000 kilogram triggering level if the patients are considered to be the consumers thus giving the hospitals the dubious double distinction of receiving everybody else's notification forms and also sending out notification forms of their own.

The Senate Environment and Public Works Committee report would lead you to believe that this amendment merely expands an established New Jersey State program to a national scale. It far exceeds the existing New Jersey program. Notification of local libraries and hospitals is not required in New Jersey, and significant portions of the New Jersey program are still in court for interpretation.

In my area, the Arkansas and Mississippi Legislatures both rejected State right-to-know bills earlier this year, but Tennessee adopted one. However, unlike the proposal before us this morning which requires full implementation in 6 months, the Tennessee program has a 24-month phase-in and narrows its scope by exempting all packaged consumer products from notification requirements on the grounds that emergency response agencies rarely have a problem in predicting the hazards of fires at paint stores, hardware stores, drug stores, or the warehouses which serve them.

Although I have detected no public clamor for such legislation, I believe that more than 20 States have now adopted some form of right to know. I came up with a list here, and it is actually 23 States that have such a provision. In any case, those are 23 States which have some form of right-to-know law which exceeds the Federal OSHA requirements. Most of these are intended to track with the Federal OSHA program and expand upon it. The proposal before you will actually create a separate parallel program in EPA and thus guarantee the confusing duplication of authority and regulations which small businesses and local governments have been complaining about during the past decade.

I recommend that the so-called community right-to-know provision should be removed from the Superfund reauthorization act and made to travel as a separate bill which could be subjected to full public scrutiny and benefit not only from New Jersey's experience but the rest of the United States as well.

Frankly, as you probably noticed, this testimony is still in handwritten form because I didn't finish it until about 5 minutes after 10 this morning, but a couple of things occurred to me in listening to other testimony. For one thing, I was in the legislature, and when things would come up where the question was: "Are you for clean water or are you against clean water?" We always were for clean water. But you have to watch out for a lot of provisions that just bog down the regulatory people in so much detail and paperwork that they can't do what they are supposed to.

First responders in our area are almost always the fire departments. The fire department is best equipped, as a general rule, to protect life and safety. EPA has a program right now in the RCRA program where contingency plans have to be sent to our fire departments by many businesses. Well, I went over to see how they file and keep up with them. Frankly, it is a mishmash, and they are literally in two big cardboard boxes because I am afraid not a lot of thought went into the requirement other than the fact it is in the statute. So, here comes all this paperwork and the fire department really has not made much use of it.

The way we function on our local Memphis-Shelby County Hazardous Materials Advisory Council is that we have a community program which we initiated ourselves in which we have a community exchange of information. We have a 32-member committee that I am the vice chairman of which has about half industry representatives and about half emergency services representatives. We have an emergency service response plan of action. We are always working to refine it. Using guidelines from FEMA, many communities are working on such plans.

It would be helpful to us if we had some official requirement that significant information be provided to us by major manufacturers and sources of highly toxic materials. In that regard, I didn't agree with much of what Dr. Moore of EPA had to say except that he did point out that EPA felt that the triggering point, the size or quantity of materials ought to be based upon how dangerous the substance is, and I sure do agree with that. There are a lot of things where you could have 10,000 gallons of it and it still wouldn't really be dangerous, but under the S. 51 amendment, it would trigger being in the notification program. On the other hand, you could have things where 2 pounds were too much to ignore. I do think that needs to be addressed.

In any case, I would be happy to answer any questions if you have any.

Senator D'AMATO. Thank you very much, Commissioner.

Senator Sasser, do you have any questions?

Senator SASSER. Thank you, Mr. Chairman.

I would ask, Commissioner Williams, based on your experience in this field over a number of years, what in your opinion exactly is the community's right to know and how far should it extend?

Mr. WILLIAMS. Although I didn't agree with all the provisions in the Tennessee act, I kind of like the way it does it. The way it does it is to say that everybody who is covered by the OSHA requirement for right to know will summarize the information that they already have to compile for OSHA. This way, you could pretty well pick up an existing program and step forward from it. It requires that a summary be prepared and that summary be made available to the State and local health departments and become public information. The Tennessee program excludes all consumer products in retail packages from reporting. This eliminates retail stores and related warehouses.

In Memphis, the Memphis-Shelby County Health Department maintains a library. Quite frankly, the way we are going to do it is that when those requirements come into effect—they will be phased in over this 24-month period—we will establish a file in that library which has this information available for the public.

Furthermore, I thought Senator D'Amato brought up a good point. When there are accidental emissions, there needs to be a mechanism for making the information available. I have had some experience with EPA——

Senator D'AMATO. You know, that is the problem. The problem is that somehow, Senator, I find that you may be criticized on the one hand for failing to require or compel every little warehouse or storer or even hardware store to send out reams and reams of paper on what he is storing. Of course, the community is not going to know because the local fire department is going to get this kind of information in certain cases and local village clerks and town clerks and libraries and whatever.

I could imagine being in an industrialized area or suburban area that has a lot of this kind of activity going on that is essentially nonhazardous having boxes and boxes of this information going to every public library and lots of other places. They are just going to store it or throw it out, because it doesn't deal with the emergency aspect of saying this is what should be done or has to be done and getting that information to those people who would respond in the event of an accident.

Mr. WILLIAMS. There is already provision in the current CERCLA statute that requires that if you have a discharge that becomes hazardous waste, you are supposed to report that. Quite frankly, my view is that could be used as a vehicle as far as requiring reports, because there hazardous wastes are clearly defined. So, that makes that information available.

The problem with EPA in our own experience in our community is that they are great "Monday morning quarterbacks." They stand around and give advice after the fact, but if you have an emergency, an emission that is floating over your community right that moment, your own fire department, your own local health department are the folks that are actually going to be responding. They are the ones who need to know and who also need to be in a position where they can make the information available to the public, and they don't want a lot of extraneous minutiae to dig through.

I would have to say that in the 15 years that I have dealt with EPA, I have found that on a local level, they are just not geared to help out immediately. They can come in later and give you all kinds of advice and second guess what you should have done, but that is just not the nature of their operation.

Senator D'AMATO. Senator.

Senator SASSER. I have additional questions, Mr. Chairman, that I will submit for the record.

Senator D'AMATO. Thank you very much.

Senator SASSER. Thank you, Mr. Williams.

Mr. WILLIAMS. Thank you.

[Subsequent information was received and follows:]

RESPONSE OF EDWARD WILLIAMS, TO QUESTIONS FROM SENATOR JIM SASSER

1. "In assessing the community right-to-know ramifications for small businesses in Memphis, what specific differences can you point out insofar as cost and paperwork requirements under S.51 and under S606?"

Although I am not as familiar with the content of S606 as I am with S.51, it appears clear that S.51 requires multiple copies of material to be compiled and distributed in the short period of six months after passage of the act to all libraries, hospitals, and police forces within an undefined area. Also, the provisions of S.51 do not set a minimum size for businesses other than the 6000 kilogram limit even if all of the "hazardous materials" are packaged for retail sale (the committee report on the bill says that retailers are excluded, but this exclusion does not appear in the bill itself). Also, S.51 says that 1% "hazardous" content is sufficient for a mixed material to be hazardous. Since "ignitability" is one of the hazardous characteristics, any material containing 1% alcohol or other flammable solvent will fall under S.51, then mixed materials which are not "ignitable" themselves will be covered by the program. Examples are beer, wine, liquors, paint, cosmetics. Since 6000 Kg. is less than 2000 gals., I believe that owners of paint stores, hardware stores, liquor stores, dry cleaners, beer distributors and larger drug stores are going to be enraged if they suddenly find themselves ensnarled in a program which they thought was intended to identify facilities handling dangerous chemicals.

2. Would most small businesses in Memphis and Shelby County be able readily to convert existing data compiled in compliance with the Resources Conservation and Recovery Act guidelines to meet the requirements under S.51?

No, because most small business do not generate enough hazardous waste to be subject to RCRA, even with the November, 1984 amendments. Senator Lautenburg's provisions in S.51 have their greatest potential impact upon small businesses which are not subject to RCRA, the Clean Air Act, or the NPDES program because they do not have toxic air emissions or total air emissions exceeding 0.5 lbs./hr., and do not hold an NPDES permit. However, since S.51 has no "de minimis" exclusions once a small business ever reports the presence of 2000 gallons of paint, alcoholic beverages, cosmetics, herbicides, pesticides or other similar retail products on its premises, it will also have to report waste generation even though the quantities may be below minimum required reporting levels under all other environmental programs.

3. Has there been any cost/benefit undertaken in conjunction with meeting community right-to-know standards?

Not to my knowledge. However, the Tennessee General Assembly spent nearly a year holding hearings across the state prior to passage of "Public Chapter No. 417" in May, 1985 and Federal legislation might benefit from the "common-sense" exemptions which were written into that act as Section 19. I am attaching a copy for your information.

July 16, 1985

Edward F. Williams III
P.O. Box 17386, Memphis, TN 38187-0386

Tenn. Public Chapter No. 417
1985 Public Acts

SECTION 19. The provisions of this Act shall not apply to:

(a) Any article which is formed to a specific shape or design during manufacture; which has end use function(s) dependent in whole or in part upon its shape or design during end use, and which does not release or otherwise result in exposure to a hazardous chemical under normal conditions of use;

(b) Products intended for personal consumption by employees in the workplace;

(c) Retail food sale establishments and all other retail trade establishments, exclusive of processing maintenance and repair areas;

(d) A workplace where a hazardous chemical is received in a sealed package and is subsequently sold or transferred in that package if the seal remains intact while the chemical is in the workplace and if the chemical does not remain in the workplace more than fourteen (14) days, except for the provisions of Sections 10 and 14;

(e) Any food, food additive, color additive, drug or cosmetic as such terms are defined in the Food and Drug Act (21 U.S.C. 201 et . seq .) or distilled spirits, wines or malt beverages as such terms are defined in the Federal Alcohol Administration Act (27 U.S.C. 201 et . seq .);

(f) A laboratory under the direct supervision or guidelines of a technically qualified individual provided that:

(1) Labels on containers of incoming chemicals shall not be removed or defaced;

(2) MSDS's received shall be maintained and made accessible to employees and students;

(3) The provisions of Sections 10 and 14 are met; and

(4) The laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes; and

(g) The workplace of an agriculture employer or employer group if the commissioner of the department of agriculture certifies to the commissioner that the chemicals are covered by other federal or state laws and regulations.

SECTION 20. The provisions of this Act shall supersede any resolution of a county legislative body or municipal ordinance which is in effect on the effective date of this Act concerning information required to be provided to employees or the public by this Act and no such resolution or ordinance shall be enacted after the effective date of this Act.

Senator D'AMATO. Let me simply say that I share a certain sense of frustration that those of the panelists have expressed in terms of the kind of paperwork that it would appear those legislative initiatives that we are discussing might result in. I am concerned that the intended beneficial impact will not take place, will not result. I am concerned with giving to those who are responsible in dealing with the kinds of emergencies that we have seen take place, the discharge of a chemical into the atmosphere, the ability to know how to respond and what to advise the citizenry as quickly and as expeditiously as possible, whether it be the local police, fire service, ambulance service, hospital people, et cetera. It seems to me that there should be a manner and vehicle by which, No. 1, the toxicity can be spelled out, and if there is a discharge, what can result, what should be done, and in practical terms. Just spell that out.

However, just to simply have reams and reams of reports that are filed with no requirement to spell out what the dangers are to health in the practical sense and what can and should be done, I don't think addresses the problem adequately. I would hope that we move expeditiously on this, because it is important, and I commend my colleague and the entire Environment and Public Works Committee for moving on this, but I think that probably there are some additional hearings—I don't know of any hearings that have been held.

As I said in my opening statement, we requested some hearings so that we could hopefully develop community right-to-know laws that made sense. Even if it is a posting at the library so that they know if there is an explosion or a chemical discharge from XYZ plant, this is the procedure, this is what should be done, whether it is a rag over the face or whether it is immediately evacuate or whether it is to stay indoors or what treatment, emergency or otherwise, should be sought. It seems to me that is what the American public would like to know as opposed to following the stream.

And I think it is important to know what will take place eventually to our environment if there are, in the production of something, discharges into a stream or the atmosphere which don't encompass the kind of emergency situation that I think most of us are concerned about. So, while I think the committee is embarking upon the proper course of action to attempt to develop that kind of legislative approach, I am somewhat concerned that we may overlegislate and not even treat the danger or deal with that danger that people feel may exist and that doesn't cover that emergency.

Let me thank the panel for your time and for your testimony.

Our last panel is Martha Broad, John O'Connor, and Warren Isman. Take your time, and we will start with Martha Broad of the Natural Resources Defense Council.

STATEMENT OF MARTHA BROAD, NATIONAL RESOURCES DEFENSE COUNCIL, WASHINGTON, DC, ACCOMPANIED BY KEN SILVER

Ms. BROAD. Thank you, Senator.

My name is Martha Broad. I am a resource specialist with the Natural Resources Defense Council.

Senator D'AMATO. May I ask the three of you to summarize your testimony? First of all, we are going to take your testimony as if read in its entirety. Just for the benefit of this Senator and the committee, let us know what you think we should be enacting, whether the legislation we are enacting, the community right to know, whether it is the right direction, what should or shouldn't be done. Is it going too far? Is it not going far enough? Is there something missing?

It seems to me that both bills are missing something. I am putting this question to the three of you. I understand where Senator Lautenberg's approach is coming from in terms of attempting to keep track of chemicals, and I think it is certainly important. I really do. I think maybe it should be the subject of a separate legislative initiative so that we don't blur the two. That is, shouldn't we have a national policy that tracks the toxicity of chemicals, the discharges, where they go, where are potentially hazardous and dangerous chemicals being used and where are they being lost so we can get some method of accountability?

I am not suggesting that might not be an approach, but I am wondering if we are blurring the two at this time and are we accomplishing that which I have spoken to just several minutes ago about how do you respond. How do you give people the source? Can they call up the police department? Does the police department have it off here in the country, whether it is the emergency volunteer corps or the volunteer fire service or the health department or whatever that has the ability to advise quickly that this is what should be done?

Ms. BROAD. Certainly, Senator, I will give you as much of that information as I can within my time limit.

We want to begin by saying that NRDC and Environmental Action whom I represent here today do agree with you that a Federal community right-to-know law should be enacted this year which does not preempt State and local laws. We do see a problem, though, in that S. 606 is not truly a community right to know bill. Therefore, we can't support it and will be happy to work with you to improve it in the ways that I will outline now.

We support the very thorough hazardous substances inventory provisions which we have heard much about this morning. Senator Lautenberg introduced them and the Environmental and Public Works Committee has incorporated them into the Senate reauthorization of Superfund, S. 51, the proposed reauthorization bill.

I would like to briefly describe the components of a strong community right to know law that we can support. The preemption of State or local community right to know laws is the first key provision that we feel is needed. Any Federal community right to know law must serve as a floor and not a ceiling to stronger State and local community right to know laws that have already been passed.

In addition, detailed information should be required from facilities handling hazardous substances. S. 606 does require facilities to submit annually a description of the substance and the amount being produced. Although it is a step in the right direction, it doesn't go far enough.

A much higher quality of information is obtained through the hazardous substances inventory mandated in S. 51. Under this proposed system we will get not only the amount and identity but also a calculation of how much of a substance is produced, how much is disposed, and how much is emitted into the environment. It is based on the Industrial Survey Form which has been successfully implemented by the State of New Jersey. Since 1978, large manufacturers have been submitting information on 155 chemicals, and it has been a system that works.

Let me go on and say that the hazardous substances inventory data will be compiled and updated by EPA every 2 years and can serve as an extremely valuable tool. We have heard a lot about an overburdening of paperwork for people that must fill out the forms. The fact of the matter is that the Office of Toxic Substances does have an information gathering system and, as outlined in the S. 51 Environment and Public Works Committee report, it would cost approximately $50,000 and take 3 months to improve that system in order that it can absorb information gathered and compiled every 2 years through the hazardous substances inventory form.

I think that in our computer age, it makes sense that we would want to put it on a computer where it can be available 24 hours a day at a toll free number for the public. In the long run, the availability of this information can save money and protect human health by reducing the amount of waste generated and, hence, the number of future hazardous waste disposal sites. Manufacturers can look at ways to recover, recycle and reduce the amount of waste, and communities can get information about chemicals sometimes literally produced in their back yards.

In addition, emergency response and notification requirements must be outlined in any law that is passed. The development of emergency response procedures, based on best available planning as written in S. 606, will not guarantee effective responses to accidents. In addition, emergency notification to one local official will not allow for the most efficient mobilization of response personnel or the local citizens living closest to the facility.

The emergency response requirements outlined in the proposed House Superfund bill introduced by Congressman James Florio, H.R. 2560, suggests a system which can better protect the community. I understand that the Senate Environment and Public Works Committee is considering adding similar emergency response provisions to S. 51 in a floor amendment.

In sum, H.R. 2560 has emergency response provisions that require each Governor to designate an emergency response district and committees within those districts which consist of representatives from the police department, the fire fighters, major manufacturers, concerned community groups, et cetera, to review, approve, and coordinate response plans. In addition, emergency labeling requirements for pipes and storage tanks and containers are mandated, and the uniform labels are to indicate the identity and appropriate method for responding to a release of the hazardous substance.

Let me say that another important point is that industry volunteerism in this area will not bring about an efficient and effective community right-to-know system. Since the accident in Bhopal, India, which we have been reminded of today at this hearing and I don't think we will be forgetting about for a long, long time, we have witnessed a number of chemical companies announcing plans intended to foster better public awareness about possible accidents, and we do commend them for doing so.

Unfortunately, volunteer programs are fully dependent upon industry funding and corporate willingness to continue the program. CMA, for instance, has announced a program to develop emergency response plans and to share some information with the community but, in fact, has made no commitment to funding the program for any length of time, and no enforcement mechanism is proposed to ensure that its members carry out the program.

However, if S. 51 and H.R. 2560 proposals are enacted, we expect chemical companies will continue to participate in these efforts but in an expanded and uniform fashion.

In sum, let me say that my organization encourages Congress to strengthen hazardous substance inventory and emergency response amendments as currently written in the pending House and Senate Superfund reauthorization bills. These proposals go a long way toward making more information available to the public and involving communities in the development of thorough emergency response plans. I think that they are particularly appropriately found in the Superfund proposals and that is the place for them, because a larger long-term goal is also advanced there. Through the implementation of these bills, a sorely needed national effort to reduce the generation of hazardous wastes and the number of future Superfund sites can begin.

Thank you very much.

[The prepared statement of Ms. Broad follows:]

exposures. I do support the effort to include emergency preparedness, but it has to go further to be in the interests of the broader public health and the long-term economic health of this country.

Senator D'AMATO. OK. Thank you, Mr. O'Connor.

[The prepared statement of Mr. O'Connor follows:]

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202 783-7800

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415 421-6561

STATEMENT OF MARTHA BROAD

RESOURCE SPECIALIST

NATURAL RESOURCES DEFENSE COUNCIL

BEFORE THE

COMMITTEE ON SMALL BUSINESS

U.S. SENATE

JUNE 18, 1985

New England Office: 850 BOSTON POST ROAD • SUDBURY, MA. 01776 • 617 237-0472
Public Lands Institute: 1720 RACE STREET • DENVER, CO. 80206 • 303 377-9740

100% Recycled Paper

My name is Martha Broad. I am a Resource Specialist with the Natural Resources Defense Council (NRDC), a non-profit environmental advocacy organization with over 45,000 members. NRDC is dedicated to the protection of human health and the environment from the hazards posed by toxic substances released into the air, land and water.

The terrible tragedy in Bhopal, India has heightened concern about the lack of information and emergency preparedness necessary to prevent similar accidents in this country. In addition, a growing public concern about the need for access to information on not only acute, but also chronic health hazards needs to be addressed. I am pleased to present testimony today on behalf of NRDC and Environmental Action and will address S. 606 and other legislative proposals as they relate to the need for passage of strong and effective community right-to-know legislation this year.

We strongly agree with Senator D'Amato that a federal community right-to-know law is needed this year which does not preempt stronger state and local laws. However, S. 606 is not truely a community right-to-know bill and therefore we will oppose the bill as written. We do support the very thorough hazardous substance inventory provisions, sponsored by Senator Lautenberg (D-NJ), which the Senate Environment and Public Works Committee has incorporated into the Senate Superfund reauthorization bill, S. 51. We also support similar provisions in H.R. 2560, the Superfund bill recently introduced in the House of Representatives by Congressman James Florio (D-NJ).

Preemption of state or local community-right-to-know laws must be prevented.

In principle, we support the provision in S.606 which leaves states and localities free to pass stronger laws in this area. There are over 60 communities and states which have passed right-to-know requirements. Any federal community right-to-know law must serve as a floor, not a ceiling, and must leave states and localities free to legislate in this area.

Detailed information should be required from facilities handling hazardous substances.

S.606 requires covered facilities to submit annually a description of the hazardous substance and the amount being produced or handled. This requirement is a step in the right direction but does not go nearly far enough.

On the other hand, S. 51 requires eligible facilities to fill out a Hazardous Substances Inventory form (which is based upon the Industrial Survey Form successfully implemented by the State of New Jersey). At present, outside of the State of New Jersey, very little if any information is available describing the amount and destination of hazardous substances any particular facility. The Hazardous Substances Inventory form provides essential information on the amount and identity of each hazardous substance which enters a facility and breaks this down into how much is produced, how much is disposed, and how much is emitted into the environment by the facility. The attached diagrams, and sample copy of the Industrial Survey form,[1] were recently produced by INFORM a non-profit environmental research group based in New York City. They very clearly point out the information available "before" and "after" the Hazardous Substance Inventory is implemented. These diagrams focus on a facility that handles large amounts of toluene.[2] The first diagram points out the lack of important information about what hazardous substances go in and come out of this plant. The second diagram outlines the information which can be made available through the use of a hazardous substance inventory form.

This Hazardous Waste Inventory data, which S.51 requires EPA to compile and update every two years, will serve as extremely valuable tools. This data will enable the manufacturing sector to look at ways to reduce, recover and/or recycle the large amount of hazardous waste produced annually. Federal and state agencies, emergency response officials, firefighters and communities will also have access to information about the volume and content of chemicals being produced sometimes literally in their back yards. The gathered data will be computerized and made accessible 24 hours a day through a toll-free telephone number.

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1. Sarokin, David, "Information Needs for Waste Reduction: Implications for Environmental Policy," Proceedings of the Waste Reduction Conference, Illinois Department of Energy and Natural Resources, April 1984.
2. Annual production of toluene is in the range of billions of gallons per year. It is "chemical cousin" of benzene and is regarded as moderately toxic (i.e. solvents affect the nervous system and toluene is associated with liver and kidney damage).

According to the Office of Technology Assessment, between 255 and 275 million metric tons of hazardous waste are generated annually.[3] Over the long term, the availability of information from the Hazardous Substance Inventory can save money and protect human health by reducing the amount of waste generated and hence the number of future hazardous waste disposal sites.

Information must be widely accessible.

S. 606 requires annual hazardous substance information submission and notification of releases, explosions, fires, or accidents to only one local official within ten miles of a facility. The availability of information must not be limited in this manner. First of all, the information should be made readily available to representatives of other relevant sectors of the community and located where it is accessible to the public. A community right-to-know law that does not mandate that concerned citizens have access to this information is not serving the needs of the community.

In addition, the information must not go only to cities with a population of 25,000 or more. Simply because a person lives in a city of less than 25,000 does not make this individual less vulnerable to accidents, or his or her health any less valuable.

We support Congressman Florio's concept, embodied in H.R. 2560, of giving the Governor of each state the authority to establish Emergency Response Districts and enabling facilities

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3. Office of Techology Assessment, Technologies and Management Strategies for Hazardous Waste Control, March 1983, p. 3.

within those districts to work cooperatively to establish a notification and response plan. Many different community representatives should also be party to the development of this plan, including: state and local emergency and medical response personnel, the state and local police, fire departments, nearby hospitals and local libraries.

Emergency response and notification requirements must be thoroughly outlined in the law.

The development of emergency response procedures "based on best available planning," as written in S. 606, will not guarantee either effective or uniform responses to accidents. In addition, emergency notification to one local official will not allow for the most efficient mobilization of response personnel or the local citizens living closest to the facility.

The Emergency Response Requirements outlined in H.R. 2560 suggest a system which can better protect the community if an accident should occur. We understand the Senate Environment and Public Works Committee is considering adding similar emergency response provisions to S. 51 in a floor amendment. Emergency response plans are required to include a thorough listing of contacts, an evacuation plan, and an emergency notification plan "so that members of the public are immediately notified of an emergency...and given instructions on how to respond to an emergency." A warning system, a public education program, and an evaluation of medical, police, and firefighting resources are also required. Emergency Response Districts are to be designated and Emergency Response Committees within those districts (including representatives from the police department, firefighters, health departments, first aid or rescue squads, hospitals, municipal or local governments, concerned community groups, and major manufacturers) are given responsibility for review, approval and coordination of response plans.

In addition, emergency labeling requirements for pipes, storage tanks, or containers are mandated. These uniform labels are to indicate the identity of the chemical and the appropriate method for responding to a release of the hazardous substance.

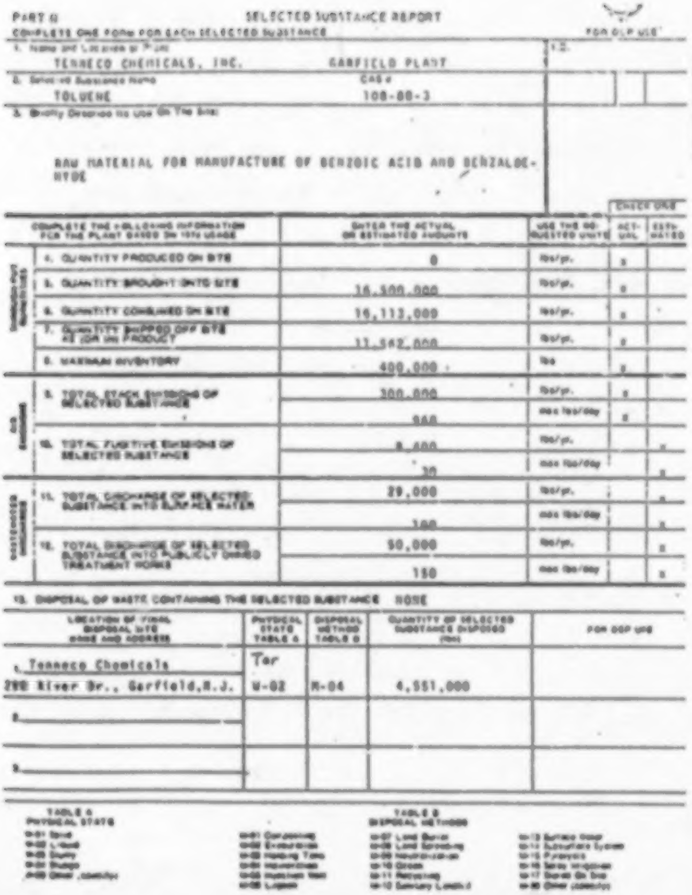
Industry volunteerism in this area will not bring about an efficient and effective community right-to-know system.

Since the accident at Union Carbide's plant in Bhopal, India, we have witnessed a number of chemical companies announcing plans intended to foster better public awareness about possible accidents and to include members of the community in the development emergency response plans. Unfortunately, volunteer programs are fully dependent on industry funding and corporate willingness to carry out the program. CMA has made no commitment to funding the program for any length of time and no enforcement mechanism is proposed to ensure that its members carry out the program.

Industry volunteerism is no guarantee of a workable, long term system promoting community right-to-know. If the S.51 and H.R. 2560 proposals are enacted, we expect chemical companies will continue to participate in these efforts but in an expanded, uniform fashion.

Congress should strenghten hazardous substance inventory and emergency response amendments as currently written in the pending Senate and House Superfund reauthorization bills.

The proposals in S.51 and H.R. 2560 share the common goal of making information on hazardous substances available to the public and involving communities in the development of thorough and workable emergency response plans. Yet, these provisions go far beyond even these important goals. Through their implementation, a sorely needed national effort to reduce the generation of hazardous waste and the number of future Superfund sites can begin.



PART II SELECTED SUBSTANCE REPORT

COMPLETE ONE FORM FOR EACH SELECTED SUBSTANCE

FOR DEP USE

1. Name and Location of Plant
TENNECO CHEMICALS, INC. GARFIELD PLANT

I.D.

2. Selected Substance Name
TOLUENE

CAS #
108-88-3

3. Briefly Describe its Use On The Site:
RAW MATERIAL FOR MANUFACTURE OF BENZOIC ACID AND BENZALDEHYDE

COMPLETE THE FOLLOWING INFORMATION FOR THE PLANT BASED ON 1978 USAGE		ENTER THE ACTUAL OR ESTIMATED AMOUNTS	USE THE REQUESTED UNITS	CHECK ONE ACTUAL	ESTIMATED
THROUGHPUT QUANTITIES	4. QUANTITY PRODUCED ON SITE	0	lbs/yr.	x	
	5. QUANTITY BROUGHT ONTO SITE	16,500,000	lbs/yr.	x	
	6. QUANTITY CONSUMED ON SITE	16,113,000	lbs/yr.	x	
	7. QUANTITY SHIPPED OFF SITE AS (OR IN) PRODUCT	11,542,000	lbs/yr.	x	
	8. MAXIMUM INVENTORY	400,000	lbs	x	
AIR EMISSIONS	9. TOTAL STACK EMISSIONS OF SELECTED SUBSTANCE	300,000	lbs/yr.	x	
		960	max lbs/day	x	
	10. TOTAL FUGITIVE EMISSIONS OF SELECTED SUBSTANCE	8,400	lbs/yr.		x
		30	max lbs/day		x
WASTEWATER DISCHARGES	11. TOTAL DISCHARGE OF SELECTED SUBSTANCE INTO SURFACE WATER	29,000	lbs/yr.		x
		100	max lbs/day		x
	12. TOTAL DISCHARGE OF SELECTED SUBSTANCE INTO PUBLICLY OWNED TREATMENT WORKS	50,000	lbs/yr.		x
		150	max lbs/day		x

13. DISPOSAL OF WASTE CONTAINING THE SELECTED SUBSTANCE NONE

LOCATION OF FINAL DISPOSAL SITE NAME AND ADDRESS	PHYSICAL STATE TABLE A	DISPOSAL METHOD TABLE B	QUANTITY OF SELECTED SUBSTANCE DISPOSED (lbs)	FOR DEP USE
1. Tenneco Chemicals 290 River Dr., Garfield, N.J.	Tar W-02	R-04	4,551,000	
2.				
3.				

TABLE A
PHYSICAL STATE

TABLE B
DISPOSAL METHODS

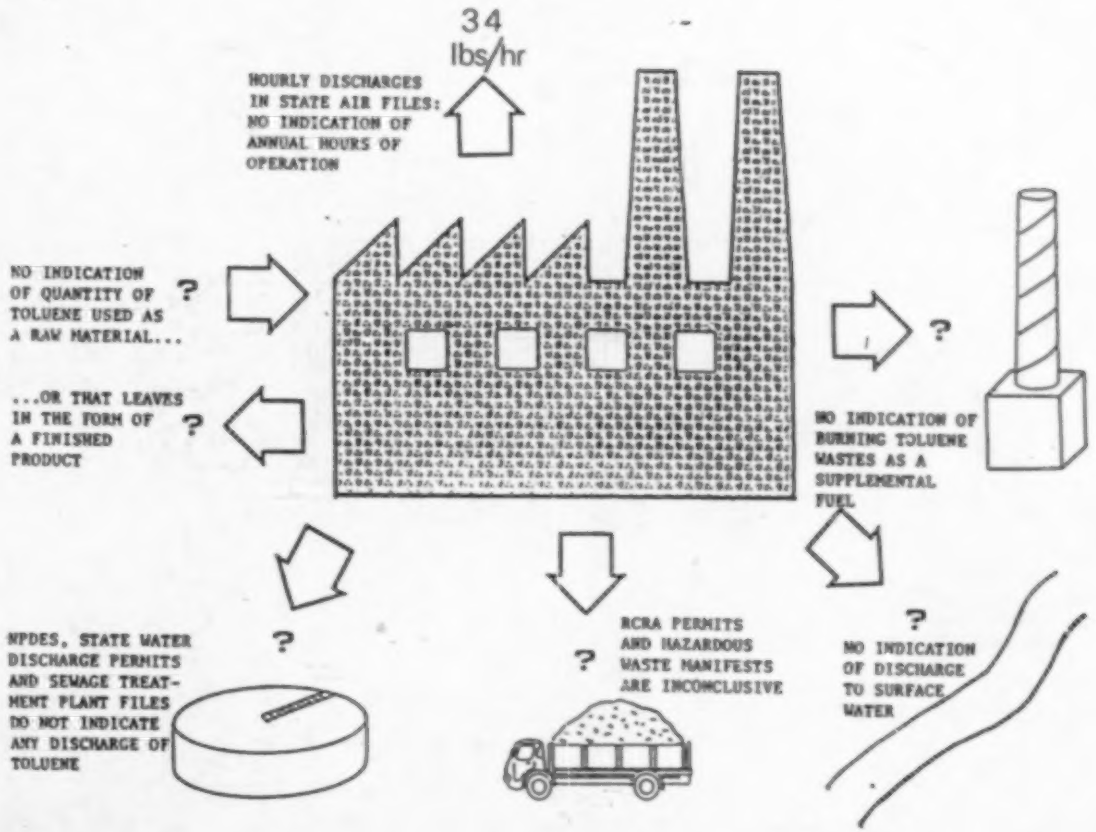
A SAMPLE PAGE FROM NEW JERSEY'S INDUSTRIAL SURVEY, DETAILING HANDLING AND ALL RELEASES OF SELECTED TOXIC CHEMICALS FROM INDIVIDUAL INDUSTRIAL FACILITIES. DESPITE SIMILAR-SOUNDING SURVEYS IN OTHER STATES, NEW JERSEY IS THE ONLY STATE THAT REQUIRES SUCH INFORMATION TO BE REPORTED.

INFORM
381 PARK AVENUE SOUTH
NEW YORK, N.Y. 10016
(212) 689-4040

381 PARK AVENUE SOUTH
NEW YORK, N.Y. 10016
(212) 689-4040

TOLUENE RELEASES AT A NEW JERSEY CHEMICAL PLANT:

INFORMATION FROM CONVENTIONAL ENVIRONMENTAL FILES

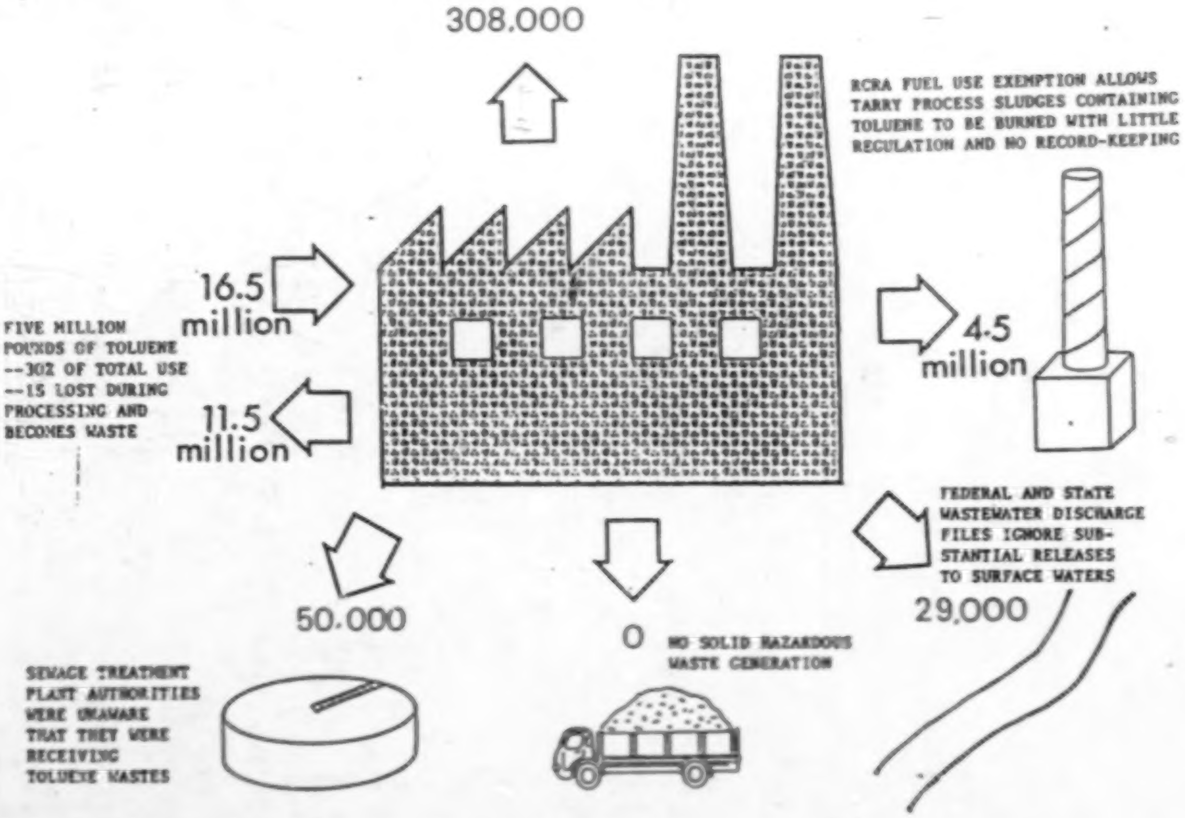

34 lbs/hr
HOURLY DISCHARGES IN STATE AIR FILES: NO INDICATION OF ANNUAL HOURS OF OPERATION
NO INDICATION OF QUANTITY OF TOLUENE USED AS A RAW MATERIAL... ?
...OR THAT LEAVES IN THE FORM OF A FINISHED PRODUCT ?
?
NO INDICATION OF BURNING TOLUENE WASTES AS A SUPPLEMENTAL FUEL
?
NPDES, STATE WATER DISCHARGE PERMITS AND SEWAGE TREATMENT PLANT FILES DO NOT INDICATE ANY DISCHARGE OF TOLUENE
?
RCRA PERMITS AND HAZARDOUS WASTE MANIFESTS ARE INCONCLUSIVE
?
NO INDICATION OF DISCHARGE TO SURFACE WATER

381 PARK AVENUE SOUTH
NEW YORK, N.Y. 10016
(212) 689-4040

TOLUENE RELEASES AT A NEW JERSEY CHEMICAL PLANT:

INFORMATION FROM THE NEW JERSEY INDUSTRIAL SURVEY

(pounds per year)



FIVE MILLION POUNDS OF TOLUENE --30% OF TOTAL USE --IS LOST DURING PROCESSING AND BECOMES WASTE

RCRA FUEL USE EXEMPTION ALLOWS TARRY PROCESS SLUDGES CONTAINING TOLUENE TO BE BURNED WITH LITTLE REGULATION AND NO RECORD-KEEPING

FEDERAL AND STATE WASTEWATER DISCHARGE FILES IGNORE SUBSTANTIAL RELEASES TO SURFACE WATERS

NO SOLID HAZARDOUS WASTE GENERATION

SEWAGE TREATMENT PLANT AUTHORITIES WERE UNAWARE THAT THEY WERE RECEIVING TOLUENE WASTES

Senator D'AMATO. Thank you very much.

Mr. O'Connor.

STATEMENT OF JOHN O'CONNOR, COORDINATOR, NATIONAL CAMPAIGN AGAINST TOXIC HAZARDS, WASHINGTON, DC

Mr. O'CONNOR. I am John O'Connor. I coordinate the National Campaign Against Toxic Hazards which is the Nation's largest coalition of unions, environmental groups, public health organizations, and hundreds of dumpsite groups across the country that have sprung up to try to work together to improve the national, State, and local laws concerning toxic chemicals.

I also come before you as an asbestos victim, and I think the example in my home town of Stratford, CT, about 30 miles from New York is a perfect example of why citizens need to know certainly about emergency preparedness information but long-term chronic exposure to toxic chemicals. It was this company with the Manville Corp. that studied the issue some 40 years ago and concluded that asbestos was, in effect, killing people and refused to tell my family, people in the community, and people working in that mill. Of course, you know, Senator, the tremendous burden that many of us have been affected by in terms of asbestos exposure.

The real issue here today is which tools shall we select to begin to solve the problem of both accidental and long-term releases of toxic chemicals.

Senator D'AMATO. And should you try to do both at the same time?

Mr. O'CONNOR. Right. I believe we should. First, I would like to summarize four basic components that we believe should be in any right to know proposal. The first is that Federal laws should not preempt stronger local and State laws, and we are happy that your proposal has strong language on this preemption issue.

The second is that a comprehensive information system, not just emergency preparedness information, must be established to solve the larger issues of long-term toxic chemical exposure. Third, citizens as well as government officials should have the right to know about acute hazards as well as long-term hazards. Fourth, we need adequate funding which we hope could include a provision in law to specifically aid small businesses in preparing whatever form of chemical inventory in right to know provisions actually get into the law.

The whole issue, it has been pointed out by several speakers, has come to our attention by the Bhopal incident. I think the real significance of the Bhopal incident is that it has got us focusing or looking at the problems posed by the chemical industry. Congress, the administration, industry, and environmentalists are now looking at toxic chemical regulation vis-a-vis the chemical industry, and we have learned that certainly we do need to prepare our emergency techniques and approaches. The larger issue seems to be how do we reduce the risk of exposure to uncontrolled toxic chemicals?

The real issue is the routine release, not just accidental release, of toxic chemicals. By reviewing the problems in the chemical industry, such as Congressman Waxman's subcommittee has done, we have learned that each year millions of pounds of chemicals that can cause cancer, birth defects, miscarriages, and other chronic health problems are routinely discharged into hundreds of communities across the Nation. I think of areas like Staten Island in your great State where residents have been complaining for years, what are those smells that are always wafting over from New Jersey?

There is now mounting evidence to suggest the connection between chronic chemical exposure and many forms of disease. It is now recognized that——

Senator D'AMATO. The problem I see, everybody is talking about this wonderful New Jersey bill, and I don't know if it has been such a great law—I haven't seen it do any great things in New Jersey or for New York so far.

Mr. O'CONNOR. Well, I think it does——

Senator D'AMATO. Hold on a second now. I am just making my own observation. We have heard testimony about the 13 discharges over a 16-week period of time. It certainly hasn't stopped the discharges. Certainly I didn't hear any New Jersey officials come on the television or radio and tell people what they should or shouldn't be doing, and I am really concerned about the fact that if you have a discharge from a particular plant that there is some mechanism or vehicle by which you tell the people what they should or shouldn't be doing and that the local hospitals have that information and emergency services. I don't see that spelled out in any of the legislation including that which I have put forth.

You see, I want to see a real right-to-know bill that will give people the ability to respond quickly and to meet the problems that might develop. If you can say that you see it in one of these two bills, I don't. I don't have any pride of authorship here. We just tried to develop a package or come up with a program that would not be unduly burdensome or cumbersome.

I understand where you are coming from. I am telling you this Senator says, OK, fine. There is that issue about tracing the toxic substances and where they go and how they accumulate, et cetera. I understand that. But in dealing with a very real situation and a potential for an immediate nightmare, not to suggest that over the years if we allow the discharge of toxic wastes and hazardous substances into our environment we may not have an equally great problem that has been building up and we have been doing nothing about it, but in terms of dealing with the emergency kind of situation that we saw in Bhopal and those that my constituents on a number of occasions have experienced vis-a-vis the discharges into the atmosphere right across the river from them that come over there, how do we deal with that?

If you can tell me you are satisfied with S. 606 or S. 51, I have to tell you I am not, and I worked on one of them. I think there is something missing. That is why I asked you if you could tell me what is missing.

Mr. O'CONNOR. I think what is needed is——

Senator D'AMATO. You know, just to go through and say S. 51 is—I read the testimony, so don't go through that, all right?

Mr. O'CONNOR. I think what is missing is the combined approaches in each. The way we define community right to know is that it must include two basic elements, emergency preparedness information and information as to long-term chronic exposures to toxic——

Senator D'AMATO. I am not going to argue the long-term chronic. That is a given. For the purposes of this hearing, I am not going to argue it. We don't have any disagreement with that, but I would treat it myself as another subject. The Environment and Public Works Committee may want to pursue that avenue, but I do not for the moment.

Let's confine, for the purposes of the balance of the time remaining which isn't much, look at the area, the emergency kind of situation, that life threatening area, in terms of what is missing in both bills. I think something is missing.

Mr. O'CONNOR. Again, I can't help but explain the reason why I think the two approaches should be combined, and I think that——

Senator D'AMATO. Why do you want to keep on doing that, Mr. O'Connor? Because I want to confine the 7 or 8 minutes left——

Mr. O'CONNOR. The reason is——

Senator D'AMATO. All right, Mr. O'Connor. For the purposes of the balance of this, I will concede the importance, the absolute necessity of seeing to it that there is accountability with respect to those toxic substances that are discharged into our environment. All right? OK? Now, let's——

Mr. O'CONNOR. But I think you are missing the point.

Senator D'AMATO. All right. You have 5 minutes. I will listen to you for 5 minutes. Now, say what you want.

Mr. O'CONNOR. The point is this: If we can combine emergency preparedness information with information about chronic health exposure, I think in the long run, this approach is not only good for the public health but the long-term economics of industry. What we are saying in effect is that many emissions, what is dumped down into the sewers, what is shot out the stacks, what is put out into landfills, many of these emissions we should actually change our view of these emissions. They are not just pollutants but misplaced, valuable raw materials.

The reason we support, for instance, listing those emissions so that people can have that information is not just for people, and perhaps the public health interests outweigh those economic interests, but I am arguing that it is also good for business to know that you have 10 million pounds of benzene going into production, 5 million goes into your product, 5 million is going out the stacks. If we can get industry to realize that, in effect, this system is a materials balance audit to the extent that they can get that information, in fact, industry can begin to make the changes that can be profitable over time.

There is this new saying that pollution prevention is profitable. Industries are finding in their books, for instance, 3M has saved about $200 million by instituting this approach. We can make a profit out of what we are currently discharging out the stacks, dumping down into sewers, and, in effect, poisoning communities.

I am just urging that your proposal, S. 606, does not go far enough and does not hit that greater issue of—in terms of sheer numbers, if you look at the cancers, the birth defects, the miscarriages, the people who are dying daily from these long-term chronic exposures. I do support the effort to include emergency preparedness, but it has to go further to be in the interests of the broader public health and the long-term economic health of this country.

Senator D'AMATO. OK. Thank you, Mr. O'Connor.

[The prepared statement of Mr. O'Connor follows:]

NATIONAL
CAMPAIGN AGAINST
TOXIC HAZARDS

733 - 15th Street, N.W., Suite 1110 Washington, D.C. 20005 202-639-1196 • 600 West Fullerton Parkway Chicago, Illinois 60614 312-975-3680

Statement by John O'Connor
National Campaign Against Toxic Hazards
before the Senate Committee on Small Business
Washington, D.C.
June 18, 1985

My name is John O'Connor. I speak before you in two capacities. One as coordinator of the National Campaign Against Toxic Hazards - the nation's largest coalition of organizations working to improve local, state and national toxic chemical control laws. We have participated in campaigns in over 20 states and over 30 local communitites to win laws giving workers, citizens and businesses the right to know about toxic chemicals. The second capacity is that I come from a neighborhood that shows us first-hand why the concept of a comprehensive right-to-know law is required to solve many of the toxic chemical threat that are before us.

I grew up in Stratford, Connecticut in back of the second largest producer of asbestos products, the Raybestos Corporation. We the community did not know as the company knew 40 years earlier that asbestos was killing workers and neighbors from asbestos exposure in the workplace, and the community.

The issue before us today is what tool shall we select to solve the problems toxic chemicals present? What policy options shall we choose to give citizens and companies the right to know about toxic chemical exposure. Our position, the position of the National Campaign Against Toxic Hazards, can be reduced to four basic concepts:

1. Federal law shall not pre-empt stronger local and state laws.

All federal right-to-know laws or regulations should be the baseline that can be improved upon at the state or local level. Different states will need to adopt specific laws and regulations for unique industries. In California, for instance, specific ordinances have been adopted regulating above ground tanks containing exotic gases used in the microelectronics industry.

2. A comprehensive information system must be established to solve the largest toxic chemical problems. Any information system must give citizens what's needed to protect, not only against accidental and emergency releases, but more importantly, information about routine releases and emissions of all kinds -- what is coming out of the stacks, what is being dumped into the sewers and what is being put onto the land. We must know the quantities, locations, identities and concentrations of all toxic chemicals and emissions.

3. Citizens as well as local, state and federal officials, must have the information that is necessary to make rational decisions about toxic chemical management. Informed citizens and government agencies are necessary to respond to rare chemical emergencies and to solve the more frequent problem of chronic chemical emissions. If chemical polluters have the privilege under law to chemically trespass into communities, then the citizenry has the basic right to know the types, amounts and

health effects of these chemicals.

4. Adequate Funding In order to implement a comprehensive information system, adequate funds are needed to organize the information in a useful manner. In addition, this Committee should consider a special technical assistance program for small businesses to comply with and utilize the chemical inventory system.

The issue of right to know has come to our attention because of the Indian chemical tragedy. The significance of the Union Carbide disaster is that it got us focussing and looking at the problems posed by the chemical industry. Congress, the Administration, industry, environmentalists, and others have focussed on the flaws of toxic chemical regulation vis-a-vis the chemical industry. We have learned that while we need to improve our everday preparedness, the larger issue is how do we reduce the risk of exposure to uncontrolled toxic chemicals?

The real issue is the routine release -- not accidental release -- of toxic chemicals.

By reviewing the chemical industry such as Congressman Waxman's Subcommittee has done, we have learned that each year millions of pounds of chemicals that cauuse cancer, birth defects, miscarriages and other chronic health problems are routinely discharged into hundreds of communities across the nation. There is mounting evidence to suggest a connection between chronic chemical exposure and many forms of disease. Proximity of residence to petrochemical facilities and chemical waste dumps are increasingly being recognized as contributing to illness and diseases. What is needed is a comprehensive program similar to New Jersey's Industrial Survey form. This successful model indentifies the hazardous substances that enter each facility and audits the chemical flow through production to disposal. We know from this system roughly the types and amounts of chemicals that go into production and what leaves in the form of product, air emissions, water emissions and hazardous waste. Such a system would serve as a materials balance audit, providing information that can offer substantial savings to industry, in addition to the obvious public health benefits.

Many of the pollutants discharged by industry are, in fact, misplaced raw materials and products. The chemical inventory system may force industry to change their view of pollution as something to be recaptured, reused or recycled -- not simply discharged. Information from this type of system is essential for the business community to understand how to make changes that allow substantial savings from pollution prevention techniques.

There are now numerous books that document the savings to be gained through the reduction or recycling of chemical wastes. Pollution prevention can be profitable but it first requires adequate information about the chemicals that are used and discarded.

The simple truth is that the right to know provision in S. 606 is inadequate for industry to reap the silver lining in the pollution clouds.

Senator, your proposal, S. 606, gives government officials information they need to combat accidental chemical releases, but unfortunately does nothing to help citizens battle the larger toxic-chemical problem of everyday operating releases of millions of tons of chemical pollutants into our air, water and soil. The D'Amato proposal gives us roughly the same information that many chemical companies are giving to communities voluntarily. Unfortunately, S. 606 is the weakest proposal in Congress and is neither good for the public health nor good for the long-term health of our economy. Language already adopted by the Senate Environment and Public Works Committee in S. 51 is a more helpful and valuable tool in solving the toxic chemical crisis we face. If the D'Amato proposal is accepted by the Congress, Americans will not have their right to know about toxic chemicals secured into law.

Senator D'AMATO. Mr. Isman.

STATEMENT OF WARREN ISMAN, CHAIRMAN, HAZARDOUS MATERIAL COMMITTEE, INTERNATIONAL ASSOCIATION OF FIRE CHIEFS, FAIRFAX, VA

Mr. ISMAN. Thank you, Senator.

My name is Warren Isman. I am the fire chief of Fairfax County, VA. I am responsible for a fire department that has a little over 1,000 career people and 400 volunteers protecting 652,000 people. I am here today representing the International Association of Fire Chiefs in my capacity as vice chair of their hazardous materials committee. We certainly appreciate the opportunity to talk to you.

I guess I am somewhat amazed at the environmental people, the Federal Government, and the industry people who know exactly what we in emergency response need. I certainly appreciate that at 3 in the morning when we have less than 3 minutes to respond to an incident and they can wake up and decide 3 hours later what we did wrong. Certainly, they are very good at that.

You asked what was missing, Senator, and I will try to be as brief as possible. I think what is missing is that everybody is making us in emergency response responsible for the information, the maintaining of the information, and having it available and then washing their hand of it very quickly. They say, we have given you the information. Now, you do with it what you wish when the incident goes down, and we have met our obligation.

Unfortunately, when the incident goes down, that is insufficient for us. There has to be a better way than deluging me with paper. With 60,000 inspectable occupancies in Fairfax County, I can be inundated with paperwork. When the incident occurs at 3 in the morning, unless it is retrievable, it is not very good for me.

Everything that has been talked about deals with hours into the incident, from the Federal EPA to the State of Virginia to any of the State governments to the environmental people who will show up in 10 hours and tell me what I did wrong.

So, I think what you really need to look at is to make the industry responsible for maintaining the lists immediately accessible. The one thought that comes to mind, and it is a very simple device, we have a problem with keys. We have hundreds of buildings that are locked, and it is very expensive when we force entry. A system has been developed whereby there is an outside wall safe with a very secure key. We carry one of those keys on each piece of apparatus which gains us entry to a central key box. It is very safe, and to the best of our knowledge, it has never been broken into. We can then enter a facility safely. We use it with all our schools, as a matter of fact.

Why can't we make the people who are storing some level of material store their inventory and informational sheets in an outside exterior safe easily accessible? They would be required to keep it up. They would maintain it on a weekly basis. They would keep the inventory of it, and we would open the safe, have the information about the incident or the chemicals in there, and have it immediately accessible. I don't need 400 clerks to keep it. I don't need a computer system. I don't have to have data entry.

And the responsibility belongs to the company that is producing the hazard, not to a local government which has all of the expenses to begin with. It seems to me a simple system exists and it can be done. Yet, nobody has talked about that. Everybody says——

Senator D'Amato. What about a system? That is what I was trying to elicit from the panel. I was not trying to contend that there should not be a community right to know. I don't really think that is the proper explanation or the title of the bill, community right to know, when we are talking about the tracing of the chemicals and where they go and how they are disposed of in the manufacture. That is misleading. That is absolutely not what you are talking about. That is just capitalizing and attempting to bring about that legislative initiative using the Bhopal tragedy as the vehicle by which to get the Congress to vote for this, because who is going to vote against that kind of situation given the experience in Bhopal. I mean, I understand the nuances of this.

I am not saying to you that what is intended should not take place, but let's talk about truth in advertising. We are certainly not putting it forth to the right document. But we are talking about the community's right to know in the sense of how do you deal with an emergency the chief has to respond to when there is a fire and there is a plume of discharge there and he doesn't know whether his men should get close to it or what they should or shouldn't do and what to advise the mayor about an evacuation or the county officials or the local media who might be used to disseminate that information or whether to signal some kind of evacuation emergency procedure?

How do you go about that?

Ms. Broad. Senator,——

Senator D'Amato. Wait. Let me just frame the question. Why shouldn't emergency management personnel have available to them by way of the computer today substances that are classified and, one step further, what is their toxicity and what should be done if they are discharged into the atmosphere by way of fire or any other way into the ground water, et cetera, what can and should be done.

That would be pretty simple so that if you had to respond to a warehouse over at a particular street, you would push that button, that section or block or lot, whatever it is, and it would come up, and you would know what was stored there and a brief synopsis of what kind of medical treatment or what could or should be dealt with in the event of that fire, explosion, discharge, et cetera, that emergency.

Mr. Isman. Senator, that is an excellent idea, and in Fairfax County we are implementing a program—as a matter of fact, we have purchased a program—whereby we are installing computer terminals, 236 terminals, one in every piece of fire apparatus and one in every ambulance. We will have access to that kind of information.

The thing is that in the United States there are now 33,000 fire departments of which only 3,000 are paid. That means we have approximately 30,000 volunteer fire departments who don't have the kind of funding for that.

Senator D'Amato. Well, I am not suggesting that it be done with every fire department, but that system at some central place be available to the emergency people. There should be information that can be quickly given to all the citizens, to emergency medical personnel, local hospitals and find out there is a treatment for what is being stored.

That is why I said before, in having this hearing looking at the legislation, I don't know if either proposal deals with that particular aspect.

Ms. Broad. Senator, I think I did outline that in my testimony that Mr. Florio in the House of Representatives does have a bill which does go into much more detail. S. 51 right now needs improvement, in my opinion, in the emergency response area. In fact, I want to point out that Mr. Isman's idea of putting a lock box outside a building is something I think sounds like it makes an awful lot of sense. Through the system in Mr. Florio's bill, Mr. Isman would be part of a committee that would sit down and plan emergency response plans, and that suggestion could be implemented in that area.

Senator D'Amato. Mr. Isman, I cut you off.

Mr. Isman. I am familiar with Mr. Florio's bill, and I, too, have a great concern about this vast paperwork that is going to be generated. Everybody wants information, and it is all going to end up on my desk or, at least, one of my employee's desks, Senator, and I have a great concern about that, because I am not going to be able to retrieve it.

We are making 60,000 inspections now. Unfortunately, I think your number is low, because we are finding—we just had a fire in a golf club in their storage facility. You would normally not expect it, but there were an enormous number of pesticides stored there.

Senator D'Amato. Sure.

Mr. Isman. And different kinds, and that inventory obviously varies. We didn't have any information and we had a lot of injuries, and there are all kinds of things that can happen with that. So, the numbers increase, and we will be able to retrieve some kind of information which will be helpful as far as inventory is concerned. Other jurisdictions will have great difficulty.

I think that is what your bill needs to really look at. It is how can we get the health and all the information which you have outlined—you know exactly what we need. I had it on the list and you spelled it out. That is what we need, and we need it retrievable very quickly.

Senator D'Amato. Well, I have been a volunteer fireman for almost 25 years now, so I have an idea that when the chief responds and rolls to a situation what he is concerned about and what the public is concerned about. You have a PCB problem now and these kinds of fires. The guy who gets there himself has an exposure.

Mr. Silver. Senator, I think the common thread that defines the emergency response approach and the prevention of chronic health hazards is very simple. It is accurate, comprehensive, and timely information on the locations, quantities, concentrations, and identities of chemicals. With the great diversity of chemicals, it needs to be computerized. For preventive purposes, it needs to be accessible to community residents as a check on the limited resources and, in some locations, limited mandates of emergency response people.

Before the accident happens, housewives, property owners, all other stripe of community residents, need access to that information as well for prevention.

Mr. O'CONNOR. Could I just add a concrete suggestion, Senator?

Senator D'AMATO. Yes, I would like to hear one, Mr. O'Connor, from you.

Mr. O'CONNOR. You might consider allowing municipalities to designate an agency, fire department or police department, depending on the different status of that locality—obviously, a New York City fire department is different from a volunteer fire department, and it might not be appropriate to send all this information over to a volunteer fire department. I also think it is an excellent suggestion to make that information available at the plant for both the public and for the fire fighters, both in a locked box system but also on file so that the citizen next door can go in and get information about what sort or emergency hazard or, as I am also suggesting, chronic hazard that particular facility poses.

The third item is simply that it appears that the best way to get this information on line is of course through funding some sort of computer system. I would still like to reemphasize that I think both proposals lack specific help for the small business community trying to figure out how to do these forms, et cetera.

Senator D'AMATO. Well, I agree with you there. It seems to me that we place—I can't believe that we could not design a legislative initiative that meets that emergency situation that I outlined to you and can very quickly disseminate or make available to both the public and to the emergency people who will be responding that information necessary for them to take the proper kind of action, whether it is to evacuate or treat. I don't see it to my satisfaction as treated in these two bills and, second, do it in such a manner that we don't create such an overburdening situation that: No. 1, not only does it cost a lot of money, but, No. 2, you have had people go through a huge exercise that is counterproductive and you obscure the very information that you are about in terms of dealing with the emergency situation.

I think the two situations should be treated for the purposes of legislation somewhat differently. I don't think you can combine the two. I am not even suggesting that they should not be part and parcel of the same treatment that the committee or overall legislation gives them, but let's understand that they are two different, distinct applications in responding to it.

I can understand those who say this has been going on for far too long, the discharge of hazardous substances into our water systems and our ecological system and want to deal with it. I understand that. I am just telling you, as a practical matter, when those fire trucks roll or when the people see this big cloud coming over, they are looking and saying what should I do or what shouldn't I do. There should be a place and a time to deal with that immediately, disseminate that information to both the emergency people and to the citizens. That is community right to know in that emergency situation.

Now, we have community right to know where we have right to protect our environment, that which is taking place. Fine. I have no difficulty in dealing with that, but I think the manner in which you respond to both of them may be entirely different.

Mr. SILVER. May I ask a question, Senator?

Senator D'AMATO. Sure.

Mr. SILVER. You stated your position with regard to preemption of local and State laws dealing with emergency response. Because you perceive them as separate, what is your position on preemption of State and local laws that deal with chronic, long-term hazards?

Senator D'AMATO. I think that the State and local governments have an absolute right to legislate in that area. I have no problem with that.

Mr. SILVER. And I also think it is important to stress that community residents can play an important role in preventing the accident before it happens as adjunct watchdogs assisting the fire department.

Senator D'AMATO. I have to suggest that there are proper areas of responsibility given to local law enforcement and health, State, local, Federal, and I am not quite ready to suggest to you that the citizens have the ability in all of these cases to be the monitor. Now, obviously, there are certain public, quasi-public areas, landfills, et cetera, where citizens, obviously, have an impact, certain situations that obviously, in most cases, Government responds by way of citizen inquiry or initiative. So, obviously, citizens play an important role.

I don't know about the delegation, et cetera. I don't know if it should be more defined than that which has been the historic role of citizen Government. You will find, again, that in all areas of governmental activity, there is basically government activities generated by way of citizen participation. Certainly, we should encourage that.

Mr. SILVER. The accessibility of the information is the key to that.

Senator D'AMATO. Oh, I have no problem with that, making it accessible to the public. I think that we try to develop a method and a means where it doesn't become an overburdening requirement on the individual businessman but that can be something of very real use to the public. That is what frustrates me. How do we put the citizen in that position so that he or she knows?

Mr. SILVER. Well, there are citizens' groups all around the country clamoring for that kind of access.

One other thing for the record, the utility of the New Jersey industrial survey has been understated or maligned today. In the testimony of the lubricants' association, the impression was created that the industrial survey in New Jersey never took effect. In fact, it has, since 1978, been gathering information from 7,000 companies on 155 chemicals. What did not take effect for the manufacturing sector was the 1983 right-to-know law which would have broadened coverage to 1,000 chemicals. The New Jersey industrial survey has been an important resource for the State department of environmental protection's enforcement efforts and for citizens' groups.

Mr. **Isman**. Senator, one final comment. We have been dealing with the list of so-called toxic substances. One of my concerns is that we are only dealing or thinking in terms of poisons as toxics. Things like propane which we in the fire service certainly are concerned about and, in Buffalo, killed seven firefighters when a tank exploded, those are the kinds of things we too need to be sure are included in a list of substances. It is not just small amounts of what will poison us.

Senator D'**Amato**. Chief, you make a great point. You make a very important point. I have seen some of my friends who have been seriously injured, and some have lost their lives as a result of coming into a situation where they just were not aware of the kind of explosives in the proximity.

Mr. **Isman**. Yes, sir.

Senator D'**Amato**. Let me thank the panel. The more I look into this, the more I see, obviously, there is more work that needs to be done, but it is important work, and I am deeply appreciative of your sensitivity to the problem and your testimony here today.

The committee stands in recess.

[Whereupon, at 12:45 p.m., the committee recessed, to reconvene subject to the call of the Chair.]

APPENDIX

CHEMICAL MANUFACTURERS ASSOCIATION

WILLIAM M. STOVER
Vice President
Government Relations

June 25, 1985

Honorable Alphonse D'Amato
Committee on Small Business
United States Senate
Washington, D.C. 20510

Dear Senator D'Amato:

Enclosed is a written statement by the Chemical Manufacturers Association submitted for the record of the Small Business Committee hearing June 18, 1985, which you chaired.

We would appreciate your adding this statement to the record, and also commend you for conducting an excellent hearing on the important subject of community right to know.

Thank you.

Sincerely,

William M. Stover

William M. Stover

Formerly Manufacturing Chemists Association—Serving the Chemical Industry Since 1872.
2501 M Street, NW • Washington, DC 20037 • Telephone 202/887-1230 • Telex 89617 (CMA WSH)

CHEMICAL MANUFACTURERS ASSOCIATION

STATEMENT
ON BEHALF OF THE
CHEMICAL MANUFACTURERS ASSOCIATION
BEFORE THE
SMALL BUSINESS COMMITTEE
UNITED STATES SENATE
ON
COMMUNITY RIGHT-TO-KNOW
June 18, 1985

2501 M Street, NW • Washington, DC 20037 • Telephone 202/887-1100 • Telex 89617 (CMA WSH)

I. Background and Overview

The Chemical Manufacturers Association ("CMA") is a nonprofit trade association whose member companies account for more than 90 percent of the total production capacity for basic industrial chemicals in the United States. CMA has been actively involved in federal, state and local legislative and regulatory initiatives respecting the release of toxic chemicals to the environment and has presented testimony on these matters before a variety of congressional committees. We believe there is a need for more effective action in this area, and we appreciate the opportunity to provide our views on the hazardous substance reporting amendment to S. 51 (the Superfund Improvement Act of 1985), which was introduced by Senator Lautenberg, and the emergency response amendment to be proposed by the Senator. We will also briefly comment on Senator D'Amato's Community Right-To-Know Act of 1985 (S. 606).

Senator Lautenberg's amendments are intended to achieve two objectives: (1) to provide information about the use, storage, and release of hazardous substances; and (2) to ensure that appropriate emergency response plans are developed for communities in which an emergency release of an extremely hazardous, acutely toxic chemical conceivably could occur. CMA understands and appreciates the concern that motivates this legislation and has begun responding actively and, we believe, effectively to this concern.

Among the principal elements of CMA's response are the following:

- Earlier this year, CMA instituted its Community Awareness and Emergency Response ("CAER") program. Under this program, plant managers are working with local emergency response officials, other local industries, and interested citizens to develop or improve community plans for responding to any chemical release emergency. The emergency response plans developed or upgraded in this process integrate chemical emergency planning with broader community plans covering all types of emergencies. Members of the local community, as well as employees of chemical companies, are involved in this effort. When completed, the plans will be made generally available, so that they can be broadly reviewed and revised to reflect useful ideas that are developed as a result of the public communication process.

In addition, the CAER program calls for information about hazardous chemicals that is made available to workers to be made available to members of the general public as well.

Material safety data sheets are a practical means of providing this information. These sheets provide detailed information on the hazards, properties and effects of chemicals produced or used at the plant. They also identify emergency and first aid procedures to be followed in the event of toxic exposure.

Emergency response planning is not new to the chemical industry. The CAER program represents the first formal effort to orchestrate this activity. More than 160 member companies have designated CAER coordinators who will ensure the program is implemented and will report progress to CMA. More than 1,300 industry representatives have attended CAER workshops and more than 4,500 CAER handbooks have been distributed. Many non-member companies are participating in the program. The CAER program establishes certain milestones for completion of various stages of the planning process, and companies are to report to CMA when these milestones are reached.

- CMA also has established the National Chemical Response and Information Center ("NCRIC") to provide to the public and to emergency response organizations information about chemicals and advice or assistance during emergencies. The Center and participating companies are implementing these objectives through four programs:

-- CHEMTREC -- This 14-year-old emergency response center, which provides information to emergency response personnel in the event of transportation incidents, is being expanded to include non-transportation incidents as well.

-- CHEMNET -- This program provides on-site assistance in the event of serious transportation incidents through a "mutual-aid" network of industry and other emergency response teams.

-- Emergency Response Training -- This program provides training materials to assist industry, firefighters and policemen in dealing with hazardous material incidents.

-- Chemical Referral Center -- This referral service provides information to the public on chemicals and their hazards. The Center will establish an "800" telephone number to be used for non-emergency inquiries from the public. Callers will be given the names and telephone numbers of manufacturers who will be able to respond to their inquiries.

The NCRIC program elements are all in various stages of implementation. We plan to have all the elements operational by December. Some of these elements, or facets of them, have been operational for years.

- CMA, at the request of Representative John Dingell (D. Mich.), Chairman of the House Committee on Energy and Commerce, is coordinating responses from member companies to a survey of monitoring, detection, reporting and emergency response practices within the chemical industry. Responses will be provided to Representative Dingell this month, which should help the Congress to better understand emission and discharge reporting.

- Finally, CMA is prepared to work with Congress, as it has in the past, to fashion appropriate legislation dealing with the development of emergency response plans and the provision of chemical information to local officials and members of the general public. Toward this end, CMA has developed a number of concepts and principles which we will outline in the course of this Statement.

* * * * *

As indicated above, CMA has taken an active role in ensuring that the public is protected against unreasonable risks posed by the release of toxic chemicals, and we are prepared to extend those efforts further on the legislative front. We believe, however, that the hazardous substance reporting and proposed emergency response amendments do not represent an effective and efficient approach to achieving the objectives that are sought. In this Statement, we will point out some of our concerns with these amendments and offer suggestions for a legislative approach that we believe would be more appropriate. One overall concern is the failure to distinguish between acute and chronic hazards. Emergency response plans should address acute emergencies. Existing environmental statutes deal with chronic hazards.

II. The Hazardous Substance Inventory Amendment

Senator Lautenberg's hazardous substance reporting amendment would impose detailed hazardous substance inventory and emissions/discharge reporting requirements on any facility owner or operator who has 10 or more full-time employees and who manufactures any amount, or stores 6,000 kilograms or more, of any one of the approximately 700 hazardous substances listed or identified under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). Each hazardous substance inventory report would have to be accompanied by a copy of the material safety data sheet ("MSDS") for the substance that is required pursuant to the Occupational Safety and Health Act. The inventory forms and MSDSs would have to be widely distributed -- at a minimum to the President; to state and local emergency and medical response personnel; to state police, health and environmental departments; to area police and fire departments; to area hospitals and emergency medical services; and to area libraries.

CMA supports the concept of providing additional chemical information to the communities in which facilities that produce, use or store hazardous chemicals are located. As noted above, we already are implementing several programs designed to achieve this objective, and we are prepared to assist in developing legislation addressed to this issue. However, we have some serious reservations about the approach taken in the hazardous substance reporting amendment and believe it could be improved in several respects.

In oral testimony before the Committee, Senator Lautenberg described the purpose of collecting emissions/discharge data as a "tracking" mechanism for long-term health effects. His testimony and others that followed did not, however, define what value data collected would have for identifying or reducing long-term health effects. People living near a facility emitting or discharging substances come in contact with chemicals from other sources continuously. It is uncertain at best whether population studies around facilities will be able to determine if emissions or discharges caused any effects associated with a facility. EPA or sponsors of bills requiring such reporting have not articulated the utility of collecting such data. Until the use of such data is defined, supported and reviewed, mandating collection is inappropriate.

Apart from the fact that its utility has not been established, we would note that the amendment fails to distinguish between the types of risks potentially presented by different chemicals; as a result, the reporting requirements may not be well suited for the wide variety of substances to which they would apply. The reporting of maximum inventory information does not seem appropriate for chemicals that potentially may present chronic health risks as a result of long-term exposure but that would not present acute health risks in the event of a short-term emergency release. Conversely, total annual emissions data does not seem appropriate for chemicals that present only acute short-term health risks. And total monthly emissions information may not be relevant for evaluating either long-term chronic or short-term acute health hazards. The failure to tailor reporting requirements to the nature of the risk presented is particularly troubling in light of the vast number of substances to which the amendment would apply.

Similarly, the coverage of the amendment may be too broad in terms of the reporting threshold. An inventory or emissions/discharge reporting requirement ought to focus on those facilities at which a significant quantity of a hazardous substance may be released to the environment outside the plant. The fact that a hazardous substance is manufactured at a facility will not necessarily create the potential for a significant release, since production quantities may be very small and the manufacturing process may be very well controlled.1/

We also believe that more thought needs to be given to the question of who is to receive the inventory reports and what information really is necessary or useful to the designated recipients. Not everyone needs the same information. Firefighters have different information needs than treating physicians. With the list of covered hazardous substances running in the neighborhood of 700 chemicals, the volume of reports generated under the amendment would be staggering. Yet, under the proposal, each facility would have to distribute hundreds (and, in the case of large metropolitan areas, likely

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1/ Conversely, the mere fact that the facility owner has fewer than ten employees does not mean that there is no risk of a significant release from the facility. In addition, trace quantities of a chemical impurity may be produced along with the substance intended to be manufactured. Requiring reporting of trace quantities of impurities presents significant technical difficulties and burdens. Yet, failing to report trace impurities, albeit unintentional, could subject the manufacturer unfairly to civil and criminal penalties imposed in the bill.

thousands) of copies of the inventory reports and MSDSs. Congress should consult with state and local officials to determine their information needs.

Such wide and indiscriminate distribution of this large mass of material is likely to be counterproductive, as well as burdensome for both the facility owner or operator and the recipients of the documents. Many of the entities designated as required recipients of the inventory reports probably would not even have room to store the documents received from a host of covered facilities in the area. More importantly, many of these entities would have no use for (and would not know how to interpret) much of the information required on the reports. Thus, while police, firefighting and emergency response officials have an interest in data that would enable them to respond more effectively to an emergency release of an acutely hazardous chemical, they have little use for information regarding total annual stack emissions, fugitive emissions, or wastewater discharges. The profusion of irrelevant information will be confusing and will detract from effective emergency response to acutely hazardous emergencies.2/

2/ We would also note that much of the information that would be required in the hazardous substance inventory reports duplicates or overlaps information already collected under other regulatory programs such as the Resource Conservation and Recovery Act and the Clean Water Act.

We are also concerned that the hazardous substance reporting amendment may not provide effective protection for trade secrets. The amendment states that information submitted on the inventory reports "shall be treated as information submitted under section 104(e) and subject to the provisions of section 104(e)(2) of CERCLA." However, Section 104(e) of CERCLA is not designed to provide trade secret protection for documents that are required to be widely distributed. Thus, Section 104(e)(2)(C) authorizes the submission of trade secret data separately from other data. But this would not provide effective trade secret protection for information required on an inventory reporting form, since the trade secret data would have to be submitted to a wide variety of recipients, including area libraries. Thus, while Section 104(e) of CERCLA may be thought to provide adequate protection for trade secrets that are submitted to a particular federal agency, it does not provide effective protection for information that is required to be as widely distributed as the hazardous substance inventory reports.

A final point worth noting is that the amendment would effectively delegate to the National Toxicology Program ("NTP") authority to make regulatory decisions, since NTP would be charged with responsibility to compile a list of additional hazardous substances subject to the inventory reporting requirement. In our view, NTP, which is a scientific organization equipped to perform a risk assessment function, should not be given responsibility for making regulatory risk management decisions. This delegation of regulatory authority is particularly troubling in light of the fact that the amendment does not provide clear criteria to guide NTP in deciding what substances should be subject to inventory reporting.

While we have a variety of concerns about the approach taken in Senator Lautenberg's amendment, CMA does support the concept of providing relevant chemical information to members of the community residing in the vicinity of facilities where hazardous substances are produced, used or stored. Accordingly, we believe that community chemical information legislation should reflect the following concepts:

- Information regarding chemicals that are produced, used, or stored at a facility should be made available to state or local officials and members of the general public in the form of material safety data sheets prepared or obtained by the covered facility owner or operator in compliance with OSHA's Hazard Communication Standard.

- The material safety data sheets should be made available to a state or local agency designated by the Governor of the state in which the facility is located. This agency, in turn, should make the sheets available to other agencies requesting the information and to interested members of the public.

- Manufacturers, importers, and distributors of hazardous substances should be required to furnish copies of the material safety data sheets to downstream customers.

- Trade secrets should be protected to the extent that they are protected under the OSHA Hazard Communication Standard.[3/]

- National requirements should exist with respect to community disclosure of chemical information. States should be precluded from imposing their own separate requirements dealing with the communication of chemical hazard information.[4/]

[3/] A recent decision of the United States Court of Appeals for the Third Circuit has limited the trade secret protection available under the OSHA Standard.

[4/] National requirements with respect to chemical information disclosure requirements is important in order to avoid subjecting manufacturers, processors, distributors, and users of hazardous substances to a host of differing and perhaps conflicting requirements which, in addition to creating unnecessary burdens, would impair, rather than enhance, health and safety protection for employees and members of the general public.

III. The Emergency Contingency Plan Amendment

Senator Lautenberg's proposed emergency contingency plan amendment deals at great length and in great detail with the development of contingency plans for responding to chemical emergencies. CMA supports the enactment of appropriate emergency response legislation. However, we have several concerns with the approach taken in this proposed amendment.

For one thing, as in the case of inventory reporting, the contingency plan amendment fails to distinguish between (i) those hazardous substances which could present a risk of imminent and substantial endangerment to public health if substantial quantities were released into the community during an emergency and (ii) those substances which are hazardous only because of potential chronic health risks that may develop over the long term. The owner or operator of a facility at which only hazardous substances of this latter type are present need not be subject to the emergency planning requirements of the amendment.

We also believe it is inappropriate to place on facility owners or operators the obligation to develop emergency response plans dealing with a number of matters over which they have no control and for which they cannot fairly be held accountable. Thus, the facility owner or operator is not in the best position to develop an evacuation plan for the community, to specify alternative traffic routes, or to identify and evaluate needed equipment, personnel, medication, hospital beds, emergency room capacity and communication systems. Nor should the plant owner or operator be expected to designate a person to serve as the community's emergency coordinator with power to implement the contingency plan. This would appear to be a peculiarly governmental function, the responsibility for which should not be delegated to private parties.[5/] In short, while facility owners and operators certainly should play a major role in working with key public and private organizations to develop emergency response plans, the ultimate responsibility must lie with appropriate state or local officials or with officially appointed emergency response committees.

The proposed emergency contingency plan amendment also appears to be unduly detailed and may deprive local officials of flexibility to design the type of plan most appropriate for their own communities. For example, the emphasis of an emergency response plan should be on protecting persons in a potentially affected area from suffering adverse health or

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[5/] Moreover, when several facilities are located in the same community, it would make no sense to allow the owners and operators of each of the plants to designate a different person to serve as the community's emergency coordinator.

safety effects. While this may require an evacuation in some cases, the nature of the potential hazards presented in other cases may call for less drastic measures. The question of plan distribution also should be left more to the discretion of local officials. In many cases, it may not make sense to distribute copies of a lengthy and complicated plan "to all persons likely to be affected by a serious release." Public and private bodies that are expected to play a role in responding to a chemical emergency certainly should be provided with full copies of the plan. But distribution to all potentially affected members of the public may not be productive.

We also question the amendment's vague but draconian provision which would result in the voiding of various environmentally-related permits for any facility that has not prepared "an adequate environmental emergency contingency plan" by specified deadlines. Emergency planning is a public responsibility. The failure to prepare an adequate plan may not be the fault of the facility owner or operator. How is one to judge whether an emergency plan is "adequate"? And who is to make this judgment? Is there to be a hearing? Will there be an opportunity for judicial review? All these questions remain unanswered. Moreover, revocation of various emission and discharge permits may not be an appropriate consequence to attach to the failure to prepare an adequate emergency response plan

-- particularly since the permit that is revoked may have nothing to do with the potential release of the hazardous substance which triggererd the requirement to prepare a plan in the first place.

For these reasons, among others, we have serious concerns about Senator Lautenberg's proposed amendment. However, CMA does recognize that appropriate emergency response legislation can serve a useful purpose; we suggest that such legislation should reflect the following concepts:

- The Governor of each state should appoint a commission (or designate an existing emergency response organization(s) within the state) to play a coordinating role in emergency response planning.[6/] The commission should work with designated local Emergency Response Committees and, upon request, should assist such Committees in developing and implementing emergency response plans.

- Each local Emergency Response Committee should develop an emergency response plan designed to minimize injury to human health and the environment in the event of an acutely "hazardous substance emergency," which should be defined as an

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[6/] If the Governor fails to appoint such a commission, the Federal Emergency Management Agency Regional Office for the region in which the state is located should serve as the commission until the Governor makes the necessary appointments.

accidental or abnormal release of a covered hazardous substance which may present an imminent and substantial endangerment to public health. "Covered hazardous substances" for purposes of emergency response planning and notification should be those which, because of high acute toxicity or other physical or chemical properties, could present an imminent and substantial endangerment to public health in the event of a short-term emergency release.

- The emergency response plan should be integrated into other existing emergency response plans for the community and should be developed in consultation with those persons or organizations which would be expected to play a major role in the event of a hazardous substance emergency. This would include owners and operators of facilities that maintain substantial inventories of chemicals which, if released into the community in substantial quantities during an emergency, would present an imminent and substantial endangerment to the public health.

- In the event of an actual or imminent hazardous substance emergency, the plant owner or operator should immediately notify designated local officials by telephone. There may be a need for periodic updates. As soon as practical, the owner or operator should furnish an Emergency Report to such officials, who, in turn, should make the Report available to interested members of the public. Each Emergency Report should fully describe the hazardous substance emergency, including the chemical name or identity of the hazardous substance, an estimate of the amount released, the time and duration of the emergency release, and the actions taken to respond to the release.

III. The Community Right-To-Know Act of 1985 (S. 606)

Senator D'Amato's S. 606 has two objectives: (1) to require sharing of information about hazardous substances with local officials, and (2) to plan for emergencies. CMA believes this bill is a more workable approach and is better focused than Senator Lautenberg's amendments. CMA is willing to work with Congress to fashion appropriate legislation to achieve these objectives.

Conclusion

CMA appreciates the public's concern and is committed to ensuring that appropriate chemical information is provided to local communities and that adequate plans are developed for responding to potential emergency releases of acutely toxic substances. In our view, however, the two Lautenberg amendments to S. 51 do not constitute an appropriate legislative response to these concerns. We have therefore suggested concepts and alternative proposals that we believe would represent a soundly-based approach to dealing with these matters. We hope that our views will be carefully considered and reflected in any action the Committee may take.

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